Devarayan Chetty Vs. V.K.M. Mutturaman Chetty and anr.

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SooperKanoon Citation : sooperkanoon.com/797396

Court : Chennai

Decided On : Dec-05-1912

Reported in : (1914)ILR37Mad393

Judge : Charles Arnold White, Kt., C.J. and ;Sankaran Nair, J.

Appellant : Devarayan Chetty

Respondent : V.K.M. Mutturaman Chetty and anr.

Judgement :

Charles Arnold White, Kt., C.J.

1. The agreement which is sued on in this case was entered into between the plaintiff and two of the relatives of one Cellayappa Chetty. The effect is clearly stated in paragraph 5 of the judgment of the Subordinate Judge.

The agreement was that the plaintiff's daughter should be married to Cellayappa's son on the 18th January 1903 and should be given usual jewel and streedhanam, etc., in the usual manner, and that in exchange Cellayappa Chetty's daughter, apparently then too young, to be married, should be given in marriage in three years from the date of the plaintiff's daughter's marriage, i.e., on or before January 1906, and that in default of either, the plaintiff to accept that girl or of Cellayappa's relations and the defendants to give her in marriage, the defaulter, i.e., the plaintiff or the defendants, as the case may be, should pay the other Rs. 5,000 in case of the plaintiff's default, with interest from 1906 January, and in case of the default of

the defendants and Cellayappa Chetty's party, with interest from the date of the plaintiff's daughter's marriage, i.e., the 18th January 1903.

2. The plaintiff's daughter was married to Cellayappa's son but died soon afterwards. The plaintiff thereupon took back the marriage presents. After the expiration of the three years, the plaintiff made a formal demand with defendants that Cellayappa's daughter should be given in marriage to his son. This was not done. Hence this suit. The Judge held that in law the agreement was not against public policy and could be enforced; but he held on the facts that the carrying out of the contract had been abandoned by agreement between the parties.

3. As regards the question of abandonment I am unable to agree with the learned Judge. The defendant's evidence that the plaintiff had stated that he did not desire that the agreement should be carried out is not supported by the witness whom he called. The Judge appears to have relied to some extent on a suggested practice or usage that, the return of the presents indicated that tie parties did not intend that the agreement should be carried out. This practice or usage was not pleaded and was not proved. On the evidence I do not think it can be held that the agreement was abandoned.

4. There remains the question: was the contract enforceable? It was argued that this was a family agreement, lawful in itself, and this being so, an agreement that the party who declined to fulfil his share of the bargain should compensate the other party was not contrary to public policy. The conclusion at which I have arrived is that the contract is not enforceable. It is true, as1 the Judge puts it, that no money is payable as 'bride-price?' to anybody. But it is a case in which third parties have a pecuniary interest in a. marriage being brought about. If an agreement between A and B that B's daughter shall marry A's son on payment of a sum of money by A to B is contrary to public policy, it seems difficult on principle to say that an agreement between A and B that B's daughter shall marry A's son and that; if she fails to do so, B shall pay a sum of money to A, is not equally contrary to public policy. In each case B has a pecuniary interest in bringing about the marriage. In one case if the event takes place, he receives money. In the other case, if the event does not take place, he has to pay money. A contract to marry

between parties who are each sui generis of course stands upon a different footing; but here the contract is between third parties. The effect of the contract, as I have said, is to give the parties a pecuniary interest in the marriage taking place. The contract as my learned, brother put it in the course of the argument, is a trafficking in marriage. There appears to be no case, English or Indian, where a contract like this has been held to be void; but as it seems to roe to fall within the mischief of the rule, I am prepared to hold that the contract is not enforceable and I think the rule applies none the less in a state of society where the marriage of children is a contract made by their parents and the children themselves have no volition in the matter. The decision of the Court of Appeal in Hermann v. Charlesworth (1905) 2 K.B. 123, shows that in England the Courts are prepared to extend rather than to restrict the class of cases to which the rule is applicable. It is now well established, at any rate in this Presidency, that a contract to make a payment to a father in consideration of his giving his daughter in marriage is opposed to public policy within the meaning of Section 23 of the Contract Act. Venkata Kristnayya v. Lahshmi Narayana (1909) 32 Mad. 185. In Purshotamdas Tribhovandas v. Purshotamdas Mangaldas I.L.R. (1909) 21 Bom. 23 it was not suggested that the contract was against public policy; but there the plaintiff was himself a party to the contract of marriage. Irene Fanny Colquhoun v. Fanny Smither I.L.R. (1910) Mad. 417 has very little bearing oh the question before Rs. There it was held that the principle of Quinn v. Leathem (1901) A.C. 495 was applicable in the case of a contract to marry and that an action was maintainable against a person for inducing a party to a contract of marriage to break that contract. On the ground that the contract is not enforceable I think this appeal should be dismissed with costs.

Sankakan Nair, J.

I concur.