

**Rajathi Vs. K. Selliah**

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**Court :** Chennai

**Decided On :** Jan-29-1966

**Reported in :** (1966)2MLJ40

**Appellant :** Rajathi

**Respondent :** K. Selliah

**Judgement :**

ORDER

**T. Venkatadri, J.**

1. This appeal arises out of an order passed dismissing the petition filed by the appellant for restitution of conjugal rights, under Section 9 of the-Hindu Marriage Act against the respondent.

2. The respondent resisted the petition filed by the appellant for restitution of conjugal rights on the ground that there was no legal or valid marriage between them. Therefore the only question that arose in the Courts below was whether there was a valid marriage between the spouses in question. Evidence was adduced to describe the nature of the ceremonies by the persons who attended the marriage and. conducted the ceremony. E.V. Ramasami Naicker, who is popularly known as 'Periyar', deposed that before the actual marriage was celebrated, it was advertised in his paper,' Viduthalai' that the marriage would be taking place on 2nd November, 1958 at Tiruchirappalli. The actual ceremony was

conducted by him and in his presence. The parties were seated on a platform before a Kuthuvilakku or lighted lamp. They made a declaration that they were taking each other as husband and wife. This declaration is known as Then they exchanged garlands and went round the platform where the Kuthuvilakku was placed. They were declared as husband and wife by E.V. Ramaswami Naicker.

3. Now the important question that arose for consideration in the Courts below was whether such a marriage is valid in law. Both the Courts have held that such a marriage is not a valid marriage and that therefore the appellant is not entitled to the relief of restitution of conjugal rights. The unfortunate wife has now preferred this appeal.

4. Before me, learned Counsel for the appellant has contended that the Courts below ignored the most important fact namely that according to the custom of the community to which the appellant belonged, the parties to the marriage used to exchange garlands and make a declaration in the prescribed form on the occasion.

5. This Court, as early as 1955, in *Deivana Achi v. Chidambaram Chettiar* (1955) 1 M.L.J. 120 also a case arising on similar facts, has held that the Hindu Law recognised three forms of marriage namely sastric marriage customary marriages and statutory marriages. It will be useful to refer to a particular passage in that Judgment at page 124:

Whether an association of persons of different sub-sects can legislate themselves to lay down a procedure which results in a valid union between two spouses is a question, which requires deeper consideration....Custom or usage in the present case is out of the question as the association was started recently, and the practice, even if it is obligatory, was not sanctioned by long usage apart from the question whether a conglomeration of persons drawn from different sub-sects or a caste could start a usage of their own so as to modify or alter the law laid down by Hindu Sastras. There may be a custom or usage of a particular caste or sub-sect or even of a family modifying Hindu law but as usage applicable to an association of persons of different sub-sects of a caste, so far as we are made aware, was never judicially recognised.

The learned Judge held in the decision cited that the marriage according to the self-respectors' cult or Suyamariyathai cult was not a valid marriage. The law has thus been clearly laid down as early as 1955. Even before that decision, many such marriages had taken place. Even after the decision was rendered in that case, persons having revolutionary ideas have resorted to this form of marriage under the guidance and presence of distinguished reformers or leaders of society. Generally, a reformer or promotor of any movement or crusade works incessantly to create public opinion and also makes research on materials available to him to prove that the reform that he wants to put into the society is a legal one. The reformers should mobilise public opinion so as to bring the necessary legislation which would declare that such marriages are valid in law. Under the existing legal prescription, the Courts have declared that such marriages, as was solemnised in the present case, are illegal, irregular and void. The agitation in respect of Suyamariyathi marriage has not yet achieved the general adoption of the form of marriage as contemplated by such reformers. The movement has not yet succeeded in revising the attitude of the Hindu public to break down the age-long traditions and sentiments. The movement has, no doubt, to a certain extent, made an impact on a particular class of society which consist of persons emotional and revolutionary in ideas of the customs of marriage. No useful purpose would be served by reformers by merely presiding over such marriages and conducting the ceremony according to their own ideas, knowing fully well that such marriages are not valid in law. No useful purpose would be served by mere exchange of garlands and making declarations that they would live as husband and wife on equal terms. In the instant case, I happened to persue the declaration known as It is written on a scrap of paper not worthy of the occasion. In this connection, I am reminded of the words of Bernard Shaw who rightly attacked the folly of the spouses making promises just before their marriage:

When the people are under the influence of most violent, most insape, most delusive and most transient of passions, they are required to swear that they will remain in that excited, abnormal and exhausted condition until death do them part.

Number of instances have come to Court when persons, who resort to such marriages take the earliest opportunity, whenever there is some reproach between

the spouses or whenever the infatuation is lost, of deserting the other party, taking advantage of the legal prescription already rendered in this Court that such marriages are void in law. Persons who encourage such marriages are not doing any good to the society or to themselves. Many of the homes which would otherwise have been sweet are wrecked because of the legal defect in this form of marriage. The reformers, who advocate such marriages by exchange of garlands and declarations, should also at the same time see that such marriages are registered under the Special Marriage Act, so as to give a legal effect to them.

6. The appellant in the instant case is a Kannada Balija Naidu and the respondent is a Kallar. The appellant was at the college, when the respondent appears to have fallen in love. Due to the advice of mediators, the marriage was celebrated according to the Suyamariyathai cult. According to the evidence of the respondent, he went to attend a function in which Periyar was expected to be present. He was there asked whether he would be willing to marry the appellant and he was compelled to go through the function. This can hardly be true, because even two days before the marriage, it was advertised in Viduthalai that such and such a marriage would be taking place on 2nd November, 1958. The respondent must have been under an infatuation to marry the appellant. He seems to have been under a spell which, though it may be timeless, has a very meagre time-limit, for, in this case, within a short time after the marriage the respondent fled away to his native place leaving the appellant in her village. However, I see in the evidence that the parties have observed some sort of custom in this marriage. Now if the appellant could establish that such a custom of exchanging garlands and making declaration and going round Kuthuvilakku prevailed in her community at the time of marriage, then she could plead that custom of usage to prove that her marriage is valid in law. The Courts below do not appear to have bestowed attention on this aspect of the matter whether there is a custom prevailing in the community of the appellant or the respondent of sitting before a Kuthuvilakku, making a declaration or promise, exchanging garlands and going round the Kuthuvilakku which would make the marriage valid in law. If such a custom or usage is proved, then certainly the Court can declare the marriage in question as valid. For this reason, I remit the petition to the Sub Court, Tiruchirapalli. The learned Subordinate Judge will frame the necessary points for determination and try the petition giving the parties liberty

to adduce evidence and finally decide the case according to law and in the light of the observations contained in this judgment.

7. The appeal is ordered accordingly. There will be no order as to costs.

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