

Devarayan Chetty Vs. V.K.M. Muthuraman Chetty and ors.

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Court : Chennai

Decided On : Dec-13-1912

Reported in : 18Ind.Cas.515

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

Appellant : Devarayan Chetty

Respondent : V.K.M. Muthuraman Chetty and ors.

Judgement :

Arnold White, 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 Vellayappa Chetty. Its 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 Vellayappa's son on the 18th January 1903 and should be given the usual jewel and stridhanam etc., in the usual, manner, and that, in exchange Vellayappa 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 on default of either, the plaintiff to accept that girl or of Vellayappa'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 default of the

defendants and Vellayappa Chetty's party with interest from the date of the plaintiff's daughter's marriage, i.e., 18th January 1903'. The plaintiff's daughter was married to Vellayappa's son, but died soon afterwards. The plaintiff, thereupon, took back the marriage presents. After the expiration of three years, the plaintiff made a formal demand on the defendants that Vellayappa's daughter should be given in marriage to his son. This was not done. Hence the 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.

2. As regards the question of abandonment, I am unable to agree with the learned Judge. The defendants' 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 the 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. 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, as 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 juris, 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 me 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 nonetheless 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. *Kalavagunta Venkata Kristnayya v. Kulwagunta Lakshmi Narayana* 18 M.L.J. 403 In *Purshottmdas Tirbhovandas v. Purushotamdas Mangaldas* 21 B. 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. The case of *Miss Irene Fanny Colquhoun v. Mrs. Fanny Smither* 5 Ind. Cas. 475 has very little bearing on the question before us. There, it was held that the principle of *Quinn v. Leathern* (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.

3. On the ground that the contract is not enforceable, I think this appeal should be dismissed with costs.

Sankaran Nair, J.

4. I agree.