

Sidda Setty Vs. Muniamma

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Court : Chennai

Decided On : Jan-08-1953

Reported in : AIR1951Mad0

Judge : Krishnaswami Nayudu, J.

Acts : Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 - Sections 2(2), 2(4) and 2(7); [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : A.A.O. No. 405 of 1950

Appellant : Sidda Setty

Respondent : Muniamma

Advocate for Def. : Sankara Iyer, Adv.

Advocate for Pet/Ap. : K.K. Gangadhara Iyer, Adv.

Disposition : Appeal allowed

Judgement :

Krishnaswami Nayudu, J.

1. The husband in a suit by the-second wife for separate residence and maintenance is the appellant in the civil miscellaneous; appeal. He had already married one Pattarnmall as his first wife. There were disputes between, him and

his first wife. The first wife obtained a decree for maintenance against the defendant. Subsequently, there was a rapprochement between, the first wife and the defendant and the first wife came and joined her husband, while the plaintiff was living with him. The plaintiff's case is that the defendant joined his first wife-Pattammal and drove her out of the house after treating her cruelly and removing the jewels from her and this incident happened on the-Sivarathri day in 1944, and that she was threatened that she would be beaten if she came and joined. The defendant denied any cruel treatment or refusal to maintain the plaintiff and stated that the suit was instituted as he had patched up his differences with his first wife and she had come and joined him and that 'the-suit was at the instance of the plaintiff's father, who is stated to be a wealthy man and who was insisting that the defendant should settle some-property on his daughter as the defendant had-done for his first wife.

2. One of the issues raised in the suit was whether the alleged ill-treatment of the plaintiff by the defendant was true. The learned District Munsif held against the plaintiff on this issue-and he believed the defendant's version as more-probable that on account of the defendant taking back his first wife, the plaintiff's father relented his action and took away his daughter. In appeal, the learned Subordinate judge of Coimbatore, while agreeing with the finding of the first, Court that the allegations of cruelty were not proved, found, however, that there were quarrels in the house between the two wives and consequently the plaintiff was not able to live in her husband's household with peace and honors due to a wedded wife, that the plaintiff was the victim of systematic unkind and unsympathetic treatment at the hands of her co-wife resulting in mental cruelty to her and that the defendant had been guilty of not protecting the plaintiff from the cruelty of his senior wife, all of which may be considered sufficient under Clause (7) of Section 2 of the Hindu Married Women's Right to Separate Residence and Maintenance Act 19 of 1946 to constitute 'justifiable cause' entitling her to separate residence and maintenance.

3. The evidence in the case does not support the finding of the learned Subordinate Judge that the plaintiff has been the victim of systematic unkind and unsympathetic treatment at the hands of 'her co-wife and the defendant did not

protect the plaintiff from the senior wife's cruelty. The plaintiff, who was examined as P. W. 5, speaks to the incident of her being driven out of the family on a particular occasion after removing the jewels and states that in respect of the jewels there was a panchayat. In cross-examination, she says that she filed a -suit because the defendant had settled properties on Pattammal, that if similar property was given to her she would agree to it and that the occasion referred to was the first occasion the defendant had assaulted her, and prior to that they were on good terms. Her charge is against her husband for assaulting her; but there is nothing in tier evidence to show that she was treated cruelly by the co-wife.. The first wife has borne two children to the defendant and there is nothing in the plaintiff's evidence as to any ill-treatment by the co-wife. It may be that after the first wife came and lived with the defendant his affection to the second wife might have waned, especially as the first wife had given birth to children. On the evidence, therefore, apart from the plaintiff not establishing any cruelty on the part of her husband towards her, she has also not specifically alleged, much less proved, that she has been subjected to cruelty by the first wife, or that she has been the victim of systematic unkind and unsympathetic treatment at her hands resulting in mental cruelty. Those findings of the learned Subordinate Judge are not supported by the evidence and therefore cannot stand.

4. The position is that the plaintiff was married as the second wife to the defendant when his first wife was living and it will not tie open to her to urge that being the second wife she should be allowed to live alone with her husband and that the first wife should not join the defendant. It is needless to point out-that, except in very exceptional circumstances, co-wives do not generally live in good terms. There are bound to be petty quarrels and jealousies between them, which are the natural consequences of marrying one who has already a wife. Not only Hindu law but Hindu society recognize the right of a husband to take more than one wife and the taking of a second wife happens ordinarily in cases where the husband has no issue by the first wife or where by reason of her health or mental condition she is incapable of affording the husband the pleasure and happiness which the husband could expect from his wife. Hindu society however never favoured a plurality of wives and in all case 3 where there has been such plurality of wives, there would nave been, some justification for the subsequent marriage for any of the grounds

specified above, mostly to satisfy the desire of the husband to have a son to perpetuate his lineage, which is considered to be necessary for the spiritual benefit of the members of the family.

5. The learned Subordinate Judge relied on a decision of Panchapagesa Sastri J. reported in-- '*Lakshmi Manchamma v. Satyanarayana*', : AIR1950 Mad356 (A)', for holding that the facts of the present case could be brought under Clause (7) of S, 2 of Act XIX of 1946 as 'justifiable cause' entitling the plaintiff to relief for separate residence and maintenance. In that case, the husband after marrying a third wife sent her away to her father's house and recalled his second wife to live with him. The third wife instituted the suit for separate residence and maintenance. But it was held that Clause (4) of Section 2, which provides that if the husband marries again, a Hindu married woman would be entitled to separate residence and maintenance, would not apply as the marriage there was not subsequent to the marriage with the lady who was asking for separate residence and maintenance. In that case, however, the third wife alleged that at the time of her husband marrying her he had given a solemn undertaking that he would have nothing more to do with the second wife, that contrary to that arrangement he brought her back and that therefore she was entitled to relief under Act 19 of 1946. The learned Judge stated that he was of the opinion that if the facts alleged by the third wife were true, that would be sufficient to enable her to claim separate residence and maintenance, that the husband could not be compelled contrary to his solemn pledges and understanding at the time of the marriage with the third wife to resile from that and compel her to live with him along with his second wife, that it was no longer the law that cruelty or something like that should be proved to justify separate 'residence and maintenance and that Sub-clause (7) was very wide in its language and was designedly intended to take in various circumstances in relation to the particular case before the Court which might make it unjust to compel the lady to live with the husband. The learned Judge however observed that 'advantage should not be taken of the generality of language to claim a right of separate residence and maintenance merely on the ground of domestic bickerings or incompatibility of temper or minor differences as are not unusual in the married lives of parties & nothing more serious is made out'. The suit was remanded for a finding as to whether the alleged understanding pleaded by the third wife was true.

6. In the instant case the plaintiff cannot rely on Section 2, Clause (4), that is, she cannot claim separate maintenance on the ground of her husband having married again, since Pattammal was 'married before the marriage of the plaintiff, she being the first wife. The claim for separate residence and maintenance is not based in the plaint on Section 2, Clause (4) but is specifically founded on allegations of cruelty, which must be shown to be 'Such cruelty as renders it undesirable for her to live with him, as provided under Clause (2) of Section 2.

7. How far and to what extent a subsequent marriage would entitle the first wife to separate maintenance under the Act was dealt with by Viswanatha Sastri J. in a Judgment of his reported in -- 'Lakshmi Animal v. Narayanaswami Naicker', : AIR1950 Mad321 (B), where the words 'marries again' in Section 2 (4) of the Act were held to be merely descriptive of the position of the husband as a twice married man at the date when the wife's claim for separate maintenance is made under the Act and do not exclude a husband who had taken a second wife before the Act from its operation. The words 'marries again' have been construed as applicable to all subsequent marriages contracted by the husband, whether before or after the Act, and the words are not confined to marriage contracted after the Act. The result is that a husband, who married more than one wife before the Act quite in conformity with the Hindu law, which permitted such marriages without any obligation on the husband's part to provide for separate residence and maintenance except in cases where it is established by evidence that the husband has been habitually cruel so as to endanger her personal safety or is suffering from any loathsome and contagious disease as leprosy, would now, in view of the decision in -- ' : AIR1950 Mad321 (B)', be liable to provide for separate maintenance, even though he could not have contemplated any such liability or obligation at the time of his contracting the subsequent marriage. This is only to point out the hardship and the injustice that would result by the interpretation of the words 'marries again' as referring to marriages before the Act of Hindu husbands, though they have not contravened any provision of the law applicable to them on the date of the marriages.

I had occasion to refer to this decision in --A. S. No. 596 of 1949 (C)', and expressed my inability to agree with the view taken in this case and I observed

that in view of the importance of the question, this matter has to be finally settled by a decision of a Bench. It appears to me that on a proper construction of the language in Clause (4) of Section 2, the words 'marries again' could only refer to a future marriage, that is, marriage after the 'Act. This, in my view, would be the reasonable and natural construction to be put upon the words without doing violence to the language or even to the spirit of the statute, and the language does not admit of any ambiguity and is plain. To do otherwise would be to lead to inconvenient and unjust results which should always be avoided. in judicial interpretation of the words of a statute. With respect to Viswanatha Sastri J., I am unable to agree with his conclusion. But as the question does not directly arise for decision in this suit, I cannot refer it to be decided by a Bench. However, as and when such a question arises for consideration, it will be eminently necessary that this important question as to the scope of the Act with particular reference to the classification of the cases of marriages which come under Clause (4) of Section 2 should be considered and finally decided.

8. The question that remains to be determined in this case is, as to whether, on the facts of this case, the plaintiff could claim separate maintenance relying on Clause (7) of Section 2. The use of the general words 'justifiable cause' following specific cases in Clauses (1) to (6), though need not be confined to matters which arise from the cases mentioned in the other clauses, could not however, be extended so as to bring within it any and every cause however trivial and inconsequential. It may be urged that they should be considered as 'ejusdem generis'; but in view of the category of cases mentioned in Clauses (1) to (6) being different, the words 'justifiable cause' may receive the plain and ordinary meaning and no limitation may be imposed upon them. However, in construing them effect must be given to the intention of the legislature as gathered from the object and the circumstances under which the enactment came to be introduced. It cannot be denied that there has been a growing feeling in Hindu society that the rights of Hindu married women to separate residence and maintenance should statutorily be recognised and not dependent on judge-made law and they should be at liberty to free themselves from cruel and undesirable husbands and should not be compelled to live with their husbands when it becomes impossible for them to live without sacrificing their health and happiness. Realising

that judicial decisions did not afford efficient protection to married women in such cases, the enactment was rightly brought into the statute book enumerating the cases in which a Hindu married woman can be allowed to separate residence and maintenance. The categories mentioned in Clauses (1) to (6) are themselves expressive of the justifiable causes, where a married woman could insist on her being provided separately,, most of the cases having already been considered to be reasonable and just by Judicial decisions, excepting the case in Clause (4), where remarriage was added as a ground to entitle the married woman to separate rights. In construing the words 'justifiable cause', it must be borne in mind that it should be such a cause as will make it impossible for the woman to live with the husband, as where he is suffering from a loathsome disease or where she is treated' cruelly or deserted, or where he brings a concubine in the house or habitually resides with her thus depriving the wife of her husband's company, or where he ceases to be a Hindu. In these cases, a Hindu married woman cannot be expected to live with her husband. But could that be applied to a case, where she has to live with another woman married as she is to her husband such marriage being legal and recognised by the community? The mere fact that her husband who is permitted under law to have more than one wife, desires to live with all the wife; together, which he would be entitled to do and which is the object with which he marries more than one wife, would not be sufficient to justify her to live separately or claim separate rights. That is obviously the justification for the enacting in Section 2 Clause (4) that if the husband 'marries again', the woman who was married earlier would be entitled to claim the rights: under the Act. The contingency of the incompatibility of two wives living together has already been provided under the Act and a further extension of the principle covered under Clause (4) could not be sought for under the general words 'justifiable cause'.

If the Legislature had intended that not only a subsequent marriage would entitle the earlier married woman to separate maintenance but also all cases where there have been more than one marriages and it would be open to every one of the married wives to leave her husband and claim separate residence and maintenance, and if such was the intention the language of Clause (4) would have been made more clear and explicit. In any event, the words 'justifiable cause' could not bring in such cases. In construing the provisions of this Act, it must be

borne in mind that the law is to be applicable to Hindu married women and one could not get away from principles governing Hindu marriage.; that marriage among Hindus is not a contract, but is a sacrament and that a Hindu wife has to be with the husband, for marriage is a holy union for the performance of religious duties also and her presence with the husband in the performance of such duties is essential and separation or such a union, though for purposes of separate living cannot be countenanced except for valid reasons. There can be no doubt that on the facts of this case there has been neither cruelty by the husband nor by the senior wife much less there is any proof of systematic unkind and unsympathetic treatment. Even assuming that there was some kind of unsympathetic treatment at the hands of her co-wife, it appears to me that that alone would not be 'justifiable cause'. But it may be that if there is habitual cruelty from the first wife which the husband is not able to prevent, the second wife would be entitled to allege it as a ground for claiming the rights under the Act, as it is immaterial whether cruelty should proceed from the husband alone; cruelty may proceed from any person in the house which the husband is unable to prevent and may sometimes passively be allowing such cruelty against the second wife. That would more appropriately come within Clause (2) of Section 2 of the Act. 'Justifiable cause' therefore must be some cause which should be considered to be real and serious by reason of which the position of the married woman becomes miserable and cannot be invoked for temporary bickerings, which are common in every Hindu family but are of a fleeting nature; In any event, sentimental incompatibility of the woman with the husband cannot be treated as 'justifiable cause' for claiming rights under the Act.

9. In the result, the appeal is allowed and the decree of the District Munsif of Kollegal dismissing the suit will stand. In the circumstances of this case, there will be no order as to costs. No leave.