

A. Janaki Vs. J. John Kennedy

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Court : Chennai

Decided On : Jan-27-2009

Reported in : (2009)6MLJ887

Judge : S. Rajeswaran, J.

Acts : [Special Marriage Act, 1954](#) - Sections 4 and 15; Hindu Marriage Act - Sections 7; Indian Christian Marriage Act; Code of Civil Procedure (CPC) - Sections 100 - Order 41, Rule 31

Appeal No. : S.A. (MD) No. 894 of 2008 and MP. (MD) Nos. 1 and 2 of 2008

Appellant : A. Janaki

Respondent : J. John Kennedy

Advocate for Def. : Ananthappan, Adv. for M. Thirunavukkarasu, Adv.

Advocate for Pet/Ap. : Santharam Natarajan, Adv. for K. Gokul, Adv.

Disposition : Appeal allowed

Judgement :

S. Rajeswaran, J.

1. The defendant in O.S. No. 134 of 2006 is the appellant before this Court. She is aggrieved by the judgment of the Subordinate Judge, Sivakasi, dated 02-04-2008

made in A.S. No. 21 of 2007, reversing the judgment dated 29-03-2007, made in O.S. No. 134 of 2006, on the file of the District Munsif, Sivakasi.

2. For the sake of convenience, the parties are referred to as per their rankings in the suit.

3. O.S. No. 134 of 2006 was filed by the plaintiff-husband, to pass a judgment and decree declaring that the defendant is not the wife of the plaintiff.

4. The case of the plaintiff in O.S. No. 134 of 2006 is that, he is a born CSI Christian and the defendant is a born Hindu. Due to compulsion, a marriage between the plaintiff and the defendant took place on 29-01-1992 at Sivakasi, in S.A.S. Arunachala Nadar Meenambal Kalyana Mandapam. The marriage was conducted by a Hindu person and the marriage was called as Suyamariadhair marriage. The plaintiff printed a separate marriage invitation following the Christian customs and the defendant printed a separate marriage invitation in the Hindu marriage form. According to the plaintiff, the marriage itself is void in law and they would not be considered as husband and wife in law. It is his further contention that the Suyamariadhai marriage could be conducted only between two Hindus and not between a Hindu and a Christian. After the alleged marriage, on the first night of the marriage, the plaintiff approached the defendant for having sexual intercourse, but she refused. She informed the plaintiff that she is already in love with another person and therefore, it is not possible to make love with him. According to the plaintiff, the defendant lived with him as a Sister for about four months and finally she left the matrimonial home on 12-05-1992 to live with her parents. From then onwards for the last 14 years she has been living with her parents only.

5. It is pointed out by the plaintiff in the plaint that prior to filing the present suit, he filed O.P. No. 1 of 1995 for divorce under the Special Marriage Act, before the District Court, Srivilliputhur. That petition was resisted by the defendant and the District Court held that since the marriage did not take place as per the Special Marriage Act, the petition is not maintainable and accordingly, the petition was dismissed. Now, the defendant filed a maintenance application in M.C. No. 165 of 2005 against the plaintiff before the family Court at Chennai alleging that she is the

wife of the plaintiff. Hence, he filed O.S. No. 134 of 2006 for the aforesaid relief. The defendant filed a written statement wherein it was stated that she is the wife of the plaintiff and she denied that she informed the plaintiff at the time of the first night that she was in love with another person,. She contended that O.P. No. 1 of 1995 was dismissed on merits and the Court held that the defendant was neglected by the plaintiff and the plaintiff and his parents treated the defendant cruelly. The Principal District Court, Srivilliputhur further found that the defendant was always willing to live with the plaintiff and there was also sexual intercourse between them and they lived as husband and wife. According to the defendant, the judgment of the District Court, Srivilliputhur, made in O.P. No. 1 of 1995 is a bar for filing the present suit and therefore the suit is barred by constructive res judicata. Having gone before the District Court, Srivilliputhur, by contending that there was a marriage between the plaintiff and the defendant and seeking divorce in O.P. No. 1 of 1995, the plaintiff cannot now turn around to say that there was no marriage and the defendant is not his wife. It is pointed out by the defendant in the written statement that the suit has been filed after 14 years from the date of the marriage and therefore, the same is hit by law of limitation. This suit is only a counter-blast to the maintenance case filed by her in M.C. No. 165 of 2005 and therefore, there are no merits in it. It is further alleged by the defendant that the plaintiff got married to another women on 07-06-1995 without the consent of the defendant and two children were also born to them out of the above said illegal marriage. She further stated that she was converted to Christianity on the advice of the plaintiff on 19-04-1992 itself and hence, she prayed for the dismissal of the suit.

6. Before the trial Court, the plaintiff was examined as PW.1 and Exs.A1 to A6 were marked on the side of the plaintiff. No evidence was let in on behalf of the defendant. On the basis of the pleadings and evidence, the trial Court framed the following issues:

- 1) Whether the suit is maintainable before the Civil Court?
- 2) Whether the plaintiff is entitled to the relief as prayed for, when he himself admitted the marriage and their martial status by filing a divorce petition in O.P.

No. 1 of 1995?

7. The trial Court found that the suit as filed by the plaintiff is maintainable and as such decided the first issue in favour of the plaintiff.?

8. While deciding the second issue, the trial Court referred to O.P. No. 1 of 1995 and found that the plaintiff admitted in the O.P. No. 1 of 1995 that both of them were married and they are husband and wife. The stand of the plaintiff in that O.P is that, the marriage took place not out of compulsion as alleged now. The trial Court has also adverted to the order of the learned District Judge who held that there was sexual intercourse between them and in fact, the defendant became pregnant and thereafter it was aborted. Hence, the trial court found that the averments made in the plaint are absolutely false. Apart from that the trial Court adverted to the findings of the District Court in O.P. No. 1 of 1995 wherein the learned District Judge found that the defendant was treated cruelly both by the plaintiff and his parents by demanding dowry and in fact, the defendant converted to Christianity and changed her name from Janaki to Nancy Janaki. The trial Court observed that the O.P filed for divorce before the District Court was dismissed on 02-07-1997, but, the present suit was filed in the year 2006, that too, after the defendant filed a maintenance case. On that ground the trial Court decided the second issue against the plaintiff and dismissed the suit.

9. Aggrieved by the judgment of the trial Court, dated 29-03-2007, the defendant filed A.S. No. 21 of 2007 before the Sub-Judge, Sivakasi. The lower appellate Court framed the following two issues namely:

1) Whether the marriage took place between the appellant and the respondent is not valid? and

2) Whether the plaintiff is entitled to a decree as prayed for by him?

10. The first appellate Court even after holding that the marriage between the plaintiff and the defendant is accepted by both the parties, found that the marriage is not conducted in accordance either under Special Marriage Act or Christian Marriage Act and therefore, the marriage is not a valid marriage. Accordingly, the

lower appellate Court allowed the appeal and declared that the marriage took place between the plaintiff and the defendant on 29-01-1992, is not a valid marriage.

11. Aggrieved by the judgment of the first appellate Court, dated 02-4-2008, the defendant filed the above Second Appeal under Section 100 of CPC.

12. The following substantial questions of law are raised on behalf of the appellant in this Second Appeal:

a) Whether the suit is not barred by res-judicata when the plaintiff/respondent herein has already filed H.M.O.P. No. 1 of 1995 on the file of the Principal District Court, Virudhunagar at Srivilliputhur for the very same relief.?

b) Whether the reason given by the lower appellate Court in reversing the judgment and decree of the trial Court is maintainable?

c) Whether the marriage took place between husband and wife belong to different religion would become automatically null and void?

d) Whether the self respect marriage (Suyamariyathai Thirumanam) between the appellant and the respondent herein to be solemnized in terms of Section 4 & 15 of the [Special Marriage Act, 1954](#) is valid?

e) The learned appellate Judge failed to consider the evidence of the respondent that the marriage took place between the appellant and respondent herein?

f) Whether the lower appellate Court has framed necessary issues to determine the appeal as contemplated under Order 41 Rule 31 of CPC?

g) The first appellate Court has grossly failed to advert to settled principles of law and substituted improper finding and has illegally disapproved the findings of the trial Court. On any score the findings of the first appellate Court are not sustainable and as such they have to be expunged and the findings of the trial Court based upon concrete evidence have to be upheld?

13. Heard the learned Counsel for the appellant and the learned Counsel for the respondent. I have also perused the entire materials including the judgments of both the Courts below:

14. The learned Counsel for the appellant/wife submits that having accepted the marriage relationship and having accepted that the defendant is his wife, the plaintiff filed O.P. No. 1 of 1995 seeking for the relief of divorce. The said O.P. was dismissed by the District Court as early as 02-07-1997. The decision was made on merits and the same is binding the parties. Having not filed any appeal against the order dated 02-07-1997, it is not open to the plaintiff to file O.S. No. 134 of 2006, that too, after a period of 12 years, seeking for the peculiar relief of a declaration to declare that the defendant is not the wife of the plaintiff. Therefore, according to the learned Counsel for the appellant, the suit itself is barred by constructive res judicata in view of the judgment of the District Court in O.P. No. 1 of 1995. He further urged that the first appellate Court without realising the prayer as sought for in the suit, granted a new relief of declaration declaring the marriage as invalid which is not even asked for by the plaintiff. Therefore, according to the learned Counsel, the lower appellate Court has exceeded its jurisdiction in going all out to grant a relief which was not even asked for by the plaintiff in the suit.

15. In support of his submissions, the learned Counsel for the appellant relied on a judgment of the Hon'ble Supreme Court reported in : [1977]3SCR428 (State of Uttar Pradesh v. Nawab Hussain) and Anr. judgment of the Apex Court reported in : AIR 1997 SC808 (Gorie Gouri Naidu(Minor) v. Thandrothu Bodemma).

16. Per contra, the learned Counsel for the respondent submits that when it is clearly established that the marriage is neither under the Christian Marriage Act nor under the Hindu Marriage Act, nor under the Special Marriage Act, there was no marriage at all and therefore, the defendant cannot be the wife of the plaintiff. He further submits that what happened at the time of the marriage ceremony on 29-01-1992 was called as Suyamariadhai marriage, which could be possible only when the marriage is between two Hindus and as the parties belong to different religions, the Suyamariadhai marriage ceremony would not apply to the case of the plaintiff and the defendant. Therefore, according to the learned Counsel for the

respondent, this aspect has been correctly dealt with by the first appellate Court and there is no question of law that arises for consideration in the second appeal. He relied on a Full Bench's judgment of this Court reported in 1991 (1) MLJ 271 (Packia Raj v. Subbammal alias Susila Bai and Anr.) and another judgment of this Court reported in 1997 (2) MLJ 449 (Asirvadam Samuel Nadar v. Raja Jothi and Anr.).

17. I have considered the rival submissions with regard to facts and citations.

18. In the light of the controversy involved in the above appeal, the following substantial questions of law arise for consideration to be determined by this Court:

- 1) Whether the judgment of the District Court made in O.P. No. 1 of 1995 dated 02-07-1997 is a bar to the present suit on the ground of constructive res judicata?
- 2) Whether the lower appellate Court has exceeded its jurisdiction in granting a relief which was not even asked for by the plaintiff in the suit? and
- 3) Whether the plaintiff is guilty of suppression of fact and false averments and thereby disentitled to the decree as prayed for by him.

19. Eventhough the filing of O.P. No. 1 of 1995 was referred to by the plaintiff in the plaint, it was stated by him that the same was dismissed on the ground of maintainability. The judgment of the District Court, in O.P. No. 1 of 1995 was marked before the trial Court as Ex.A5. A perusal of Ex.A5 will show that the plaintiff in the suit filed the same for the relief of divorce by admitting that there was a valid marriage between them. There also it was pleaded by him there was no sexual intercourse between them and he was informed by the defendant that she was in love with another person. The District Court after going through the entire evidence found that there was no basis for the allegation of the plaintiff that the defendant refused to have intercourse with him by stating that she was in love with another person. In fact, the District Court found that the defendant was treated cruelly by the plaintiff and his parents. A finding was also rendered by the District Court that sexual intercourse in fact did take place between the parties and there was no truth in that allegation made by the plaintiff. A finding was also

rendered that the defendant got herself converted to Christianity and changed her name to Nancy Janaki. It also referred to the deposition of the plaintiff wherein he himself admitted that the defendant used to hold the hand of the plaintiff and kiss him in the public place. This would disprove the statement of the plaintiff that they lived together as brother and sister for just four months. The District Court has also accused the plaintiff for suppression of facts and filing false averments. Thus, after deciding the entire case on merits, the District Court also dismissed the O.P on the ground of maintainability.

20. From the above judgment, it is very clear that the plaintiff already filed O.P. No. 1 of 1995 for divorce and obtained adverse findings on 02-07-1997 itself. It is not in dispute that no appeal was filed against that judgement and it was allowed to stay. Thus, the findings of the District Court made in O.P. No. 1 of 1995 reached its finality. Thereafter, the defendant filed M.C. No. 165 of 2005 before the family Court, Chennai, praying to direct the plaintiff to pay a sum of Rs. 10,000/- for her maintenance. Only at that time, the plaintiff woke up and filed the present suit for the declaratory relief, declaring that the defendant is not his wife. In such circumstances, I am of the considered view that the findings rendered by the District Court in O.P. No. 1 of 1995, on 02-07-1997 have become final and the same could not be re-opened now by filing another suit by differently wording the prayer. Therefore, I answered the first substantial question of law in favour of the appellant and against the respondent as the present suit is certainly barred by constructive res judicata.

21. In 1997 (2) SCC 806, cited supra, the Hon'ble Supreme Court held that a plea though available, but not taken in earlier litigation, cannot be raised in subsequent petition in respect of the same cause of action. The principle of estoppel per res judicata is a real evidence. This doctrine is based on two theories namely;

- a) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of community as a matter of public policy; and
- b) the interest of the individual that he should be protected from multiplication of litigation.

22. In 1997 (2) SCC 532, cited supra, the Hon'ble Supreme Court held that in their inter party judgment by the competent Court will bind the parties to the case even if the finding is erroneous.

23. In 1997 (2) MLJ 449, cited supra, this Court held that the evidence of long cohabitation is not the evidence of solemnisation of marriage.

24. In 1991 (1) MLJ 271, cited supra, a Full Bench of this Court held that when a marriage between a Christian and a Hindu was celebrated according to Suyamariadhai ceremony and not in accordance with the provisions of the Indian Christian Marriage Act, Section 7(a) of the Hindu Marriage Act will not apply as Section 7(a) will apply only if both the parties are Hindus.

25. There is no controversy with regard to the proposition of law settled in the judgments relied on by the Counsel for the respondent. But, that is not useful to his contention as by allowing the findings of the District Court made in O.P. No. 1 of 1995 to become final, the present suit filed by the plaintiff on the same set of pleadings is barred by constructive res judicata.

26. It is an admitted fact that the prayer in O.S. No. 134 of 2006 is to pass a judgment and decree declaring that the defendant is not the wife of the plaintiff. Whereas the first appellate Court while allowing the appeal, granted a decree of declaring that the marriage took place between the plaintiff and the defendant on 29-01-1992 is not valid. Thus, it is very clear that the lower appellate Court has lost sight of the prayer sought for by the plaintiff and definitely exceeded its jurisdiction to grant a new prayer which was not even asked for by the plaintiff in the plaint. Therefore, this question of law is also decided in favour of the appellant and against the respondent.

27. Now, coming to the plaint averments in O.S. No. 134 of 2006 it is an admitted fact that the plaint does not refer to any of the adverse findings he obtained in O.P. No. 1 of 1995 with regard to:

a) the sexual intercourse that took place between them:

b) the pregnancy of the wife and the abortion made thereafter;

- c) the cruel treatment meted out to the defendant by the plaintiff and his parents;
- d) the conversion of the wife to Christian religion; and
- e) instead, he falsely averred that the O.P was dismissed on the ground of maintainability alone.

28. Further, there was not even a whisper with regard to the filing of the present suit after 12 years from 02-07-1997 when the O.P filed by him for divorce was dismissed by the District Court, Srivilliputhur. Therefore, it is to be safely presumed that this suit has been filed as a counter-blast to the Maintenance Petition filed by the wife in M.C. No. 165 of 2005. In fact, that itself was shown as the last cause of action in para 15 of the plaint. In such circumstances, the plaintiff is guilty of suppression of facts and a person who is guilty of suppression of facts and who does not come to the Court with clean hands, does not deserve any sympathy from the temples of law and accordingly on this ground also, the suit filed by him in O.S. No. 134 of 2006 deserves to be dismissed.

29. In the result, the judgment of the lower appellate Court made in A.S. No. 21 of 2007 is set aside and the judgment of the trial Court is restored.

30. Consequently, the Second Appeal is Allowed. No costs. Connected MP. Nos. 1 and 2 of 2008 are also closed.