

Mohammed Khan Sahib Vs. Ali Khan Sahib and anr.

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SooperKanoon Citation : sooperkanoon.com/811633

Court : Chennai

Decided On : Nov-04-1980

Reported in : (1981)1MLJ402

Appellant : Mohammed Khan Sahib

Respondent : Ali Khan Sahib and anr.

Judgement :

P. Venugopal, J.

1. The plaintiff is the son of Abdul Azeez Khan through his wife Amina Beevi. The defendants are the sons of the said Abdul Azeez Khan through his another wife Hairroa Beevi As per Exhibit A-1 the marriage between the said Abdul Azeez Khan and Hairroon Beevi was on 3rd January, 1921 and as per the birth extracts Exhibits A-2 and A-3 the defendants were born long prior to the marriage between Abdul Azeez Khan and Hairroon Beevi. The plaintiff's case is that the defendants are the illegitimate sons of his father in view of the fact they were born prior to the marriage between his father and Hairroon Beevi. The plaintiff has hence filed a suit for declaration that the defendants are not the legitimate sons of his father and to restrain them by means of a permanent injunction from interfering with the plaintiff's management and administration of Saint Veli-Yullah Thaikkal. The defendants' contention is that these was a valid marriage between Abdul Azeez Khan and their mother Hairroon Beevi and their father has acknowledged them as his sons.

2. The trial Court held that the identity of the persons mentioned in the certificate Exhibits A-2 and A-3 have not been proved and as there is a valid acknowledgement, the defendants are the legitimate sons of the plaintiff's father Abdul Azeez Khan. On appeal, the lower appellate Court held that Exhibits A-2 and A-3 relate to the defendants and at the lime of the birth of the defendants, there was no valid marriage between Abdul Azeez Khan and Hairroon Beevi, the mother of the defendants and as the defendants are the illegitimate sons of Abdul Azeez Khan, they cannot be made legitimate by acknowledgment of their legitimacy by the plaintiff's father. The 1st defendant has preferred the second appeal before this Court.

3. The learned Counsel for the hi defendant-appellant contended that the defendants' mother had been treated as his wife by the father of the plaintiff, and defendants have been continuously living together under the same roof and properties were also allotted to the defendants in the family partition in 1953 and as family members, the defendants have been permitted to apply sandalwood paste to the graveyard of a Muslim Saint and as there has been a valid acknowledgement of their legitimacy by the plaintiff's father, they should be held as the legitimate sou, of the plaintiff's father.

4. The leading case on the dectrine of acknowledgment is the decision of the Privy Council in Sadki Hussain Khan v. Hasim Ali Khan (1916) 1 L R 38 All. 627. wherein it was held that in cases of uncertainty of legitimate descent, an acknowledgment by the father raises a presumption of legitimacy unless the other side can prove that the boy whose paternity was acknowledged was of illegitimate descent The Privy Council has further pointed out that when a man and. a woman have cohabited continuously for a number of years, the law

presumes in favour of marriage and against concubine and an acknowledgment involves the assertion that the father was married to the acknowledgee's mother. So when a son has in his favour a good acknowledgment of legitimacy the marriage will be held to have been proved and legitimacy established unless the marriage has been disproved. It is, therefore, clear that where the paternity of a child cannot be proved by establishing the marriage between its parents at the time of its conception or birth, Mahomedan Law recognises 'acknowledgment' as a method whereby such marriage and legitimate descent can be established for the purpose of inheritance. The Mahomedan Law of acknowledgment of paternity can be invoked only where the factum of marriage or the exact time of the marriage has not been proved. The doctrine of acknowledgment is based on the assumption of a lawful union between the parents of the acknowledged child. The doctrine, however, is not applicable where the lawful union between the parents of the child is not possible as in the case of incestuous intercourse or an adulterous connection. The doctrine is also not applicable where the marriage necessary to render a child legitimate is disproved.

5. In the instant case it can be seen from Exhibit A-1 that the marriage between plaintiff's father and defendant's mother took place on 3rd January, 1921, whereas the defendants, as per Exhibits A-2 and A-3 were born to their parents long prior to the marriage. The finding of the trial court that the identity of the persons mentioned in Exhibits A-2 and A-3 have not been proved is clearly erroneous since the father's name and the mother's name of the child are mentioned both in Exhibits A-2 and A-3 and they clearly refer only to the plaintiff's father and the defendant's mother. The contention that the residential addresses are not mentioned in Exhibits A-2 and A-3 and hence they cannot be taken as relating to the defendants cannot be accepted since there is no column under Exhibits A-2 and A-3 to give the residential address of the parents of the child. The descriptive particulars mentioned in Exhibits A-2 and A-3 regarding the parents of the child are sufficient to indicate that the birth certificates relate only to the defendants. There is also the evidence of P.W. No. 1 which clearly establishes that the birth certificates Exhibits A-2 and A-3 relate only to the defendants. The genuineness of Exhibits A-2 and A-3 cannot be doubted since they are official documents maintained according to the procedure contemplated under the French Code Civil. Except for a bare denial that Exhibits A-2 and A-3 do not relate to them, the defendants have not come forward to establish the actual date of the marriage of their father with their mother Hairoon Beevi or their actual date of birth. The father's name and mother's name given in Exhibits A-2 and A-3 are the same as the name of the plaintiff's father and defendant's mother and they cannot be brushed aside just as a mere coincidence. The trial Court's finding that in Karaikal region there are many Muslim parents having the same name as mentioned in Exhibits A-2 and A-3 cannot be accepted as there is absolutely no evidence in support of that finding. It therefore, follows that at the time of the birth of the defendants there was no valid marriage between the plaintiff's father and their mother Hairoon Beevi and as the defendants were born during the pre-marital stage, they cannot be considered as the legitimate sons of the plaintiff's father. There is also no evidence to show that the plaintiff's father had at any time acknowledged their mother Hairoon Beevi as his wife prior to Exhibit A-1. As there was no marriage between the plaintiff's father and the defendant's mother prior to their birth as evidenced by Exhibits A-2 and A-3, they cannot be held to be legitimate sons of the plaintiff's father by relying on the doctrine of 'acknowledgment'. A child born of 'Zina' cannot be made legitimate by acknowledgment. Similarly the defendants who were born before the date of marriage with the plaintiff's father cannot be held to be legitimate sons of plaintiff's father by relying on the doctrine on acknowledgment.

6. In the result, the judgment of the lower appellate Court is confirmed and the appeal fails and stands dismissed, in the circumstances without costs.