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P. Mariammal Vs. Padmanabhan

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Court : Chennai

Decided On : Aug-01-2000

Reported in : AIR2001Mad350

Judge : B. Akbar Basha Khadiri, J.

Acts : Hindu Marriage Act, 1955 - Sections 13 and 29(1); Code of Civil Procedure (CPC) , 1908 - Sections 100

Appeal No. : Second Appeal No. 1491 of 1996

Appellant : P. Mariammal

Respondent : Padmanabhan

Disposition : Appeal allowed

Judgement :

B. Akbar Basha Khadiri, J.

1. The defendant who has lost before both the Courts below, has come forward with the instant Second Appeal.

2. This Second Appeal has arisen in this way one Athinarayanan had two sisters by name, Kamalatchi and Kuppammal. Kamalatchi was given in marriage one Perumal. Perumal, Kamalatchi couple had two sons and four daughters, by name

Irulappan, Perlakaruppan, Chellammal, Mariammal (who is the appellant herein) Savurlammal and Ramayee. Irulappan had a daughter by name, Pushpam. Kuppammal was given in marriage to one Sermal. We are not concerned with Kuppammal's family. Athinarayanan's wife was one Gnanammal. Through Gnanammal, Athinarayanan begot three children, by name, Rajaiah, Padmanabhan. (the respondent herein), and Jothiammal, Jothiammal was given in marriage to one Velusamy. Jothiammal died on 15-4-1984 we are not concerned with Jothiammal's family also. Athinarayanan's wife Gnanammal was a Christian by birth, who was given in marriage to one Devasagayam alias Mottian, through him, she begot a daughter by Mary Thyamal. Somewhere during 1925-1926, a divorce has been effected and Devasagayam and Gnanammal got separated. Thereafterwards, Gnanammal married Athinarayanan arid begot children. Mariammal, the appellant herein who is a sister's daughter of Athinarayanan was given in marriage to one Manikatti during 1961. According to the appellant Mariammal, Manikatti became a converted Christian and marriaged on Pabuthai. Because Manikatti became a Christian and married another woman, a divorce was effected between Manikatti and Mariammal during 1967 or 1968. According to the appellant herein she married Rajaiah the brother of the respondent herein on 4-7-1969. According to her, she is the legally wedded wife of Rajaiah. Rajaiah died on 1 -7-1979 or 2-7-1979. According to the respondent, the suit properties were purchased in the name of Rajaiah utilising the Joint fund of Rajatah and the respondent, and that the appellant herein falsely claiming herself as the wife of Rajaiah, claimed rights in the suit properties, which made him to file a suit for declaration of his title and also for the relief of injunction and in the alternative for delivery of possession.

3. The appellant herein as defendant, countered the case of the respondent/plaintiff contending that her marriage betweenManiketti and herself was dissolved by divorce during 1968 and later, she married Rajaiah during 1969 that she is the legally wedded wife of Rajaiah and that the properties were the absolute properties of Rajaiah and therefore, the respondent /Plaintiff cannot claim any right, title or interest in the properties.

4. The trial Court examined the respondent/plaintiff as P.W. 1 and marked Exs. A. 1 to A.30 documents on the plaintiffs side, and examined four witnesses on the side of the defendant and marked Exs. B. 1 to B74 documents. After analysing the evidence, the trial Court has come to the conclusion that the marriage between the appellant herein Mariammal and Manikatti had not been dissolved, even otherwise after coming into force of the Hindu Marriage Act, there can be no customary divorce. The trial Court has further held that there had been no marriage between Rajaiah and the appellant herein for her to claim marital status of Rajlah's wife. Accordingly the trial Court decreed the suit.

5. On appeal the first appellate Court concurred with the findings of the trial Court and dismissed the appeal which led to the filing of the instant Second Appeal.

6. I am conscious that when both the Courts have given concurrent findings, though, erroneous, it should not be interfered with. In Deity Pattabhiramaswamy v. S. Hanymayya AIR 1959 SC 57 the Supreme Court has expressed the view that there is no jurisdiction to entertain a Second Appeal on the ground of erroneous findings of facts, however, gross in error But in determining a question of where application of principles of law are involved in arriving at ultimate conclusion on the basis of the findings of the facts, then that amounts to a case of mixed question of law and facts and the ultimate conclusion has to be drawn by applying the principles of law to the basic findings and this, the ultimate conclusion gives rise to a question of law. Normally, the facts found by the lower appellate Court need not be questioned but if the soundness of the conclusion from then is in a question, then that is a matter of law.

7. In the instant case, I feel that there is misconstruction of facts amounting to misconstruction of law which seeks for interference from this Court. At the same time. it should be pointed out that the trial Court has admitted relevant and irrelevant documents, admissible and inadmissible documents and documents which had arisen subsequent to the filing of the case, the suit has been filed during 1985. The documents which had come into existence subsequent to 1985 had been admitted. Dehors such procedural error, 1 am satisfied that the trial Court erred in construing the evidence and coming to the wrong conclusion of law. The

two points which stood before the trial Court were whether the marriage between Manikatti and Mariammal was dissolved by divorce and whether Mariammal married Rajaiah.

8. Coming to the first question, the trial Court has held that the appellant/defendant though pleaded that there had been a divorce during 1967, had instituted Criminal proceedings against Manikatti during October 1968. Claiming herself to be the wife of Manikatti and that while her marriage subsisted Manikutti had taken a second wife. According to the trial Court, there can be no customary divorce subsequent to the coming into force of the Hindu Marriage Act.

9. Regarding the marriage between Maniammal and Rajaiah, the trial Court has held that there was no marriage between the appellant/defendant and Rajaiah, because at the time of the marrige, Rajaiah, was fairly old (41 years) he was sickly person affected with Supre-Nuclear palsy and was bedridden and at the relevant time of marriage Rajaiah was at Madras. The lower appellate Court which is supposed to be the final Court on questions of fact had failed to look into the records and consider them in the proper perspective. The learned Sub Judge has picked certain sentences here and there from the trial Court's judgment and formulated his judgment without even applying his mind to the facts of the case. Therefore it has become necessary for this Court to go into question of fact even to find out whether there is misconstruction.

10. The appellant/defendant admits that she married Manikatti during 1961 and because Manikatti became a convert to Christianity and married a Christian girl by name Pabuthai, the marriage between Manikatti and the appellant/defendant was dissolved. There was a customary dissolution of the marriage that existed between Mariammal and Manikatti. Both the Courts below were of the opinion that Ex. A.2, the Judgment rendered in C.C. No. 439 of 1968 would falsify the case of the appellant/defendant. Clear reading of Ex. A.2 would go to show that though the appellant/defendant had claimed that her marital tie with Manikatti subsisted during 1968, Manikatti as prime accused in that case had pleaded that there had been a customary divorce 1 1/2 years prior to the institution of the criminal proceedings and had even produced Ex. D.1 document a deed of divorce to which

the appellant herein/defendant had herself subscribed his signature. This had been accepted by the learned Judicial Magistrate, I am not on the question whether the findings of the criminal Court is binding on a trial Court. But suffice it to say that even during those proceedings a deed of divorce has been produced in the Court which contain the signature of the appellant/defendant herein - Manlkatli who was the first husband of the appellant/defendant, was examined as D.W.4, Manikatti himself had stated that the marriage that subsisted between himself and the appellant herein/ defendant was divorced during 1968. D.W.4 is not a rustic or illiterate. He is a retired teacher. His version is corroborated by D.W.2 who has deposed that he was a witness to the divorce. Further, when both the marital parties admit that there had been a divorce and they have taken different life partners, the trial Court ought to have accepted their evidence, instead closing its ears to their versions. It is not as if the theory of divorce is put forward for the first lime before the trial Court. This has been pleaded long back during 1968 itself, in the criminal proceedings.

11. Both the courts below were of the view that after coming into force of the Hindu Marriage Act, there can be no customary divorce of a marriage. Hindu marriage under the Act is one solemnized between the persons who are Hindu. The legislature as laid down that conversion of one of the spouses to another religion offers a ground to other spouse to seek dissolution of marriage. In the instant case, D.W.4 had stated that he abdicated his religion by a clear act of renunciation and adopted a religion by undertaking formal conversion and also by taking a Christian wife. He ceased to be a Hindu within the meaning of this Section 2(3) of Hindu Marriage Act enabling the appellant/defendant to seek dissolution of marriage.

12. The question is whether the appellant /defendant should seek recourse to Section 13(1)(i) and (ii) of the Hindu Marriage Act or whether a customary divorce would effect dissolution of the marriage. Section 4 of the Hindu Marriage Act recites as under :--

'4. Save as otherwise expressly provided in this Act,

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.'

A reference to Section 29(2) of the Hindu Marriage Act would also be useful. Section 29(2) of the Hindu Marriage Act recites as under :--

'29(1)

(2) Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.'

It is a fact that divorce was not known to the general Hindu law, but then in certain communities, divorce, was recognized by custom and the courts upheld such custom when it was not opposed to public policy. The scheme and object of the present Act is not to override any such custom which recognized divorce and effect is given to the same by the saving contained in this subsection. It is not necessary for parties in any such case to go to Court to obtain divorce on grounds recognized by custom. The custom must of course, be valid custom. Therefore, the finding of the trial Court that there cannot be a customary divorce after the advent of Hindu Marriage Act, is erroneous finding of law. The lower appellate Court approved the finding of the trial Court without applying its mind.

13. The only question is whether customary divorce is proved. It is not in dispute that the respondent/plaintiffs mother Gnanammal herself was a Christian. The marriage subsisted between Gnanmmal and Devasagayam was put to an end during1925-1926 and there afterwards, Gnanammal married Athinarayanan. The existence of customary divorce is spoken to by D.W.2, D.W.3 and D.W.4. Manikatti. Both the Courts below have not looked into this aspect. But, they simply held that there can be no customary divorce. The fact of existence of customery

divorce has been referred in Ex. A.2 indicating that the parlies have pleaded customery divorce as early as 1968 and even the third parties had been examined to let in evidence to prove such custom. I am satisfied that the practice of customary divorce existed in the community of the appellant/defendant and because Manikatti became a Christian, a customary divorce has been effected.

14. Coining to the question of marriage, I have already pointed out that the trial Court has held that there was no marriage between Rajaiah and the appellant/defendant, Rajaiah was at Madras, he was sick and he was 41 years old at the time of the marriage. There is no bar for an eligible bachelor to get married at the age of 41 years.

15. The second aspect which swayed the trial Court was that Rajaiah was living at Madras then, and therefore, the marriage could not be performed at Kandanur. According to the appellant/defendant, the marriage was celebrated on 4-7-1969. The respondent/plaintiff has produced certain money order receipts and other documents to show that Rajaiah was living at Madras during the relevant time. Of course, if at all the respondent is to deny the marriage, the mere fact that Rajaiah was living at Adambakkam during 1969 by itself would not prove that Rajaiah would not have gone to Kandanur on 4-7-1969. The radio licence Ex. A. 14 is of no avail, because that was issued on 3-4-1968. The fact that the respondent/plaintiff has sent certain money order to Rajaiah during 9-5-1969 and 29-10-1969 as evidenced by Ex. A. 31 and Ex. A. 32 by itself may not prove that Rajaiah was continuously living at Madras and he had not gone to Kandanur during July 1969.

16. The next aspect that swayed the mind of the trial Court was that Rajaiah was a sick person and during 1969, he was sick. I have perused all the relevant records produced by the respondent/plaintiff in this regard. But for Ex. A. 25 there is no other piece of evidence to show that Rajaiah was sick priorto his marriage, Ex. A. 25 is a prescription dated 17-6-1968. Underwhich Rajaiah was prescribed to take three chlorostrep capsuls, one capsule thrice a day. This by itself would not establish that Rajaiah was so sick that he was not in a position to marry. On the other hand the appellant/defendant has produced Clinching documents to show

that Rajaiah was in the pink of his health during 1971-1972 Exs. B.2 and B-3 would go to show that Rajaiah had undergone a course in indigeneous medicine to get Diploma of practising indigenious medicine PIM if he himself was afflicted with-supra-nuclear palsy then there would not have been any occasion for him to take such course and he would have in a position to attend the course with the intention to practice medicine if he had been afflicted with paralysis and was immobile Ex. B-17 a document issued by the Railway Department would show that Rajaiah was given a pass to travel from Madras to Bodinyakkanur between 28-12-1971 and 27-3-1972 along with his wife and widowed mother. The trial Court had stated that Rajaiah had undertaken treatment in Annamalai Government Hospital from October 1968 to November 1969. There is no indication about the place where the hospital is situate. There is no document to establish such facts. It is not known on what basis the trial Court has held so. In fact, Exs. A.31 and A.32 Money order receipts dated 9-5-1969 and 29-10-1969 by themselves demolish the case that Rajaiah was an inpatient from October 1968 to November 1969, because he had received the Money orders addressed to his Adambakkam address.

17. There is extremly a strong presumption in favour of validity of marriage, if from the time of alleged marriage, the parties are recognized by person concerned, as man and wife and so described in important documents and important occasions, The very finding of the trial Court that Rajaiah was not at all married, is demolished by the contents of document Ex. B-16 letter dated 23-3-1971 written by one Dr. Muthu, professor of surgery, Madurai Medical College, Madurai wherein he has stated.

(Vernacular matter is omitted)

indicating that Rajaiah was married and had a life partner. Ex. B-17 document referred to supra also indicates that Rajaiah had a wife, admittedly Rajaiah died during 1979. Ex. B-37 document maintained by theDepartment of Rural Development and Land Acquisition would show that his death was reported on 5-7-1979 and the person who reported the death was his wife Mariammal.

18. There are documents ante litem motam to show that the appellant/defendant was the wife of Rajaiah. Ex. B-67 nomination dated 5-2-1976 relating to the family

benefit scheme would show that the appellant/defendant had described Rajaiah as her husband and nominated him to receive the family benefit funds. Further Ex. B-35 the certificate issued by the Head Master of a school where the appellant/defendant was working indicates that she had applied to maternity leave from 22-10-1972 to 21-12-1972, Ex. B-36, the document would also show that she had applied for leave due to death of Rajaiah. It appears that the respondent/ plaintiff had not taken any objection to the marking of these documents. Therefore, the probate value of the same cannot be now questioned.

19. The other documents produced by the appellant/defendant would show that Rajaiah had incurred certain debts with the Co-operative Society and the Co-operative Society has recognized. The appellant/defendant as his wife and sent communication to her to pay the debts. In fact, Mariammal the appellant/defendant, had made certain payments to the Co-operative Society even during the lifetime of Rajaiah Ex.B-73, voters list shows the appellant/defendant as wife of Rajaiah. There is overwhelming evidence to hold that Rajaiah and the appellant herein had lived husband and wife. It is not the case of the respondent/plaintiff that though Rajaiah and the appellant/defendant lived together, in fact there was no marriage between them. According to the respondent/plaintiff, the appellant is an imposer and she is falsely claiming herself to be the wife of Rajaiah. Once when the appellant/defendant establishes by clinching evidence that she is recognized as the wife of Rajaiah. then the further question whether the ceremonies necessary to solemnize a marriage should be proved, does not arise.

20. Of course, the respondent/plaintiff has produced documents to show that he had taken Rajaiah to Vellore for treatment and he had stayed at Vellore with Rajaiah. That by itself would not go to show that there had been no marriage between the appellant/defendant and Rajaiah or the appellant/defendant was not attending to theneeds of Rajaiah at all. In fact Ex. B-74, letter written by the respondent/plaintiff itself would negative such a conclusion it reads thus :--

(Vernacular matter is omitted)

indicating that the appellant/defendant was present at Vellore when her husband was undertaking treatment. In Ex. B.74, it is recited is under :--

(Vernacular matter is omitted)

21. The trial Court was further swayed away by recitals in certain documents where the appellant/defendant had described hereself as daughter of perumal. The fact that she has described herself as daughter of Perumal by itself would not show that she is a virgin or she is not the wife of Rajaiah.

22. Both the courts below misconstrued the evidence and this arrived at a wrong conclusion of question of facts and law. This second appeal is therefore, allowed, with cost of the appellant throughout. The judgment and decree of both the Courts below are set aside.

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