

J. Ruth Vs. C. Mani

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Court : Chennai

Decided On : Dec-15-1997

Reported in : 1998(2)ALT(Cri)112; 1997(3)CTC562

Judge : S. Thangaraj, J.

Acts : [Code of Criminal Procedure \(CrPC\) . 1973](#) - Sections 125

Appeal No. : Crl. R.C. No. 409 of 1995 (Crl. R.P. No. 408 of 1995)

Appellant : J. Ruth

Respondent : C. Mani

Advocate for Def. : N. Maharaja, Adv.

Advocate for Pet/Ap. : J. Srinivasan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S. Thangaraj, J.

1. The respondent in M.C. No. 30 of 1990 on the file of the Judicial Magistrate No. 2, Poonamallee and the 1st Respondent before the Sessions Judge, Chengalpattu in Crl. R.C. No. 1 of 1993, has preferred this revision petition.

2. The revision petitioner, by name Mrs. J. Ruth claiming to be the wife of the respondent, and her sons alleged to have been born to her through the respondent C. Mani, have filed M.C. No. 3 of 1990 before the Judicial Magistrate No. 2, Poonamallee, claiming maintenance. Learned Magistrate, who recorded the evidence of parties, came to the conclusion that the 1st petitioner is entitled to get maintenance at the rate of Rs. 300 per month with effect from 10.4.1990 and the petitioners by name Gopi and Jeyakumar as minor sons of the respondents are entitled to get maintenance at the rate of Rs. 100 each per month from the above date and dismissed the claim of the 1st son Murali, who had already attained majority. Aggrieved by the said order, the husband Mani, who was the respondent, had preferred a Revision Petition No. I of 1993 on the file of the Sessions Judge, Chengalpattu who set aside the order of the learned Magistrate and dismissed the petition filed by the wife. Aggrieved by the said order, the wife Mrs. J. Ruth has preferred this present petition.

3. It was alleged on the side of the petitioners that the respondent Mani had married the first petitioner J. Ruth in the year 1960 and thereafter they lived together as husband, and wife, and during the period the three Sons by name Murali, Gopi and Jeyakumar were born to them. Thereafter the couple lived in the Housing Board Buildings, Venkatapuram, for ten years happily and for 1 1/2 years prior to the filing of the petition, the respondent had started quarreling with the petitioners and the 1st petitioner had given complaint against the respondent to the authorities and also sent a lawyer's Notice. The respondent Mani is working in the Postal Department and earning a sum of Rs. 1,500 per month. The respondent, as husband of the 1st petitioner and father of petitioners 2 to 4 is liable to pay maintenance. The respondent repelled each one of the contentions of the petitioners and had stated that he had not married the 1st petitioner that petitioners 2 to 4 are not born to him and the entire claim is false and liable to be dismissed. Though the learned Magistrate granted maintenance to the wife and two minor sons, dismissing the claim of the major son, learned Sessions Judge dismissed the entire petition denying maintenance to the petitioners.

4. The main grounds on which the petition was dismissed by the learned Sessions Judge are:-

(1) Mr. C. Mani and Mrs. Ruth are not husband and wife.

(i) The alleged marriage between C. Mani and Mrs. Ruth was not legal on the ground that Mani is a Hindu and Ruth is a Christian.

(ii) The alleged marriage between them was illegal as it was conducted during the subsistence of a valid marriage between C. Mani and one Alamelu (R.W.3)

(2) The documents exhibited on the side of the petitioners are insufficient to prove the paternity and as such there is no conclusive proof that all the three children were born to Mani and Mrs. Ruth.

5. It is the case of the petitioners that the respondent Mani married the 1st petitioner Mrs. Ruth and they lived as husband and wife that the three minor children are born to them during the subsistence of their co-habitation. The respondent Mani denied every allegation and stated that he had married one Alamelu (R.W.3) that they have got children and he never married the petitioner Mrs. Ruth and the other petitioners are not born to him. The trial Court accepted the case of the petitioners and granted maintenance to the 1st petitioner Mrs. Ruth and the two minor petitioners, leaving one of the sons who had attained majority during the proceedings. It is the case of the 1st petitioner Mrs. Ruth that the respondent Mani married her and they lived as husband and wife for nearly three decades and the three other petitioners were born to them. The respondent has stated that he married one Alamelu (R.W.3) on 14.7.1960 and during the subsistence of their marriage she had given birth to five children, among them one died at young age and all the four children are still living. The revision petitioner has also stated that the respondent Mani married her in the year 1960 and they lived in Chitlapakkam for about 15 months and thereafter they lived in the Housing Board at House No. 2/8 Chinnamalai for one year and all the three sons were born to her through the respondent Mani when they lived together as husband and wife. One of her sons, the 3rd petitioner, by name Gopi has deposed before the trial Court and his evidence corroborated the evidence of his mother. P.W.3, a neighbour, has clearly stated that the revision petitioner and the respondent lived together as husband and wife under the same roof. The respondent has let in contra evidence. Though the respondent tried to deny his marriage and his co-

habitation with the revision petitioner, it is clear from the evidence of the witnesses, examined on the side of the petitioner, that the respondent has married the revision petitioner and all the three children were born to them during their co-habitation. However, the learned Sessions Judge while deciding the marital status of the revision petitioner has held that the revision petitioner being a Christian and the respondent being a Hindu cannot celebrate a valid marriage and the said marriage was null and void. The next reason assigned by the learned Sessions Judge was that since Alamelu (R.W.3) has stated that she and the respondent Mani married on 14.7.1960 and as there was no clear evidence regarding the date of marriage between Mani and Mrs. Ruth in all probability the marriage between Mani and Mrs. Ruth could have taken place only after the subsistence of the earlier marriage and therefore the marriage between them was not valid in law. In *Smt. Yamunabal Anantrao Adhav v. Anant Rao Shivram Adhav* 1988 (1) MWN (Crl.) 74 the Apex Court held that for a valid marriage between Hindus Section 5 Clause (I)(i) of the Hindu Marriage Act lays down the necessary condition being that neither party should have a spouse at the time of marriage, and a marriage in contravention with this is null and void. The 1st petitioner has failed to produce acceptable evidence to show that her marriage with Mani had taken place earlier to the marriage of Mani and Alamelu (R.W.3). From the evidence available on record, the 1st petitioner was unable to say the date of marriage between her and Mani and it can be said that the marriage between Mani and Alamelu had taken place earlier to the marriage between Ruth and Mani. The School certificate of P.W.2 Gopi shows that Mani was converted to Christianity which means that Mrs. Ruth continued to be a Christian. There is no proper evidence on the side of the petitioners that Mani converted to Christianity earlier to his marriage with Mrs. Ruth and the marriage between them was solemnized as per the Indian Christian Marriage Act. As there is no evidence regarding the conversion of Mani to Christianity and as there is evidence to show that Mrs. Ruth continued to be a Christian even after her marriage with Mani, the said marriage cannot be termed as valid.

6. It was argued on the side of the revision petitioner herein Mrs. Ruth and Mani lived together under the same roof and co-habited for number of years, the law would raise a presumption that they lived as husband and wife. To substantiate

this contention, the learned counsel for the revision petitioner relied upon a ruling in *S.P.S. Balasubramanyam v. Suruttayan alias Annai Padayachi*, : AIR 1992 SC756 and the Supreme Court held that in such circumstance as there was no such evidence to destroy that presumption, the same can be accepted.

This Court in *Vaidyaliagam v. Valijammal* 1995 (2) L.W. (Crl.) 631 held that a Christian lady married to a hindu in a temple and co-habited for 30 years, as a Hindu the marriage was valid.

In *Sumitha Devi v. Brikanthcudmary*, : 1985 CriLJ528 , the Supreme Court held:-

'it is equally true that there can be marriage acceptable in law according to customs which do not insist on performance of much rites as referred to above and marriage of this type give rise to legal relationship which law accepts.'

7. Learned counsel for the revision petitioner has argued that Mrs. Ruth and Mani lived together, co-habited for more than 30 years and P.W.3 had deposed to that effect and therefore there is a presumption of valid marriage between them. Two main reasons go against these propositions.

Firstly, if at all there was a marriage between first petitioner and the respondent Mani, it was a marriage between a Christian lady and a Hindu man, the validity of the marriage is in dispute.

Secondly, it is clear from the evidence available on record that they married when the first marriage of Mani with Alamelu was subsisting. There is no acceptable evidence regarding the marriage itself. All these reasons will stand against the marriage between Mr. Ruth and Mani. There is evidence to show that they lived together as husband and wife. However, from the School Certificate of P.W.2 Gopi it is clear that Mani embraced Christianity and Mrs. Ruth continued to be a Christian even after her marriage with Mani. Though the society treated them as husband and wife, she did not convert herself to Hinduism and follow the way of life which Hindus are accustomed to this part of the country. As there is no clear evidence in this respect, the decision of this Court reported in *Vaidyaliagam v. Valliammal* 1995 (2) L.W. (Crl.) 631 where the Christian lady married a Hindu man

in a temple and led her life as a Hindu by going to temples, etc. will not be applicable to the instant case. It is by the long co-habitation with a man and the recognition by the society would give the status of a wife to a lady. However, in this case also such a status can be given to the first petitioner Mrs. Ruth if her marriage with Mani was valid. As already stated when many reasons stand against the validity of the marriage between Ruth and by showing the long co-habitation with Mani and the recognition of the society, she cannot call herself as a legally married wife of Mani. Section 125 Cr.P.C. requires the status of a wife to a lady to claim maintenance. As the status of Mrs. Ruth as the legally wedded wife of Mani, has not been proved, she cannot claim maintenance from him. As such the order passed by the learned Sessions Judge cancelling the maintenance of the 1st petitioner Mrs. Ruth has to be confirmed.

7. However, the said order passed by the learned Sessions Judge, Chengalpattu, in respect of minors Gopi and Jayakumar is without jurisdiction. Learned Magistrate granted maintenance to both of them, and refused maintenance to the first son Murali as he had attained majority. It is well settled that even the illegitimate children are entitled to get maintenance from their father. Against the order of the trial Magistrate, a revision was filed before the learned Sessions Judge by the respondent Mani wherein he has not added as parties the two minor Sons in whose favour the maintenance was granted. However, when they were not parties before the sessions Judge and no challenge was made by the father Mani, the Sessions Judge cannot cancel the maintenance granted to them by the learned Magistrate. Though their mother Ruth is not entitled to claim maintenance, the name is not applicable to the minor sons. The minor Sons though illegitimate are entitled to claim maintenance from their father till they attain majority. In Smt. Yamunabai Anantra Adhav v. Anant Rao Shivram Athav 1988 (1) MWN (CrI.) 74, the Apex Court held that under Section 125 Cr.P.C. even an illegitimate child is entitled to claim maintenance from his father. Learned Sessions Judge without assigning any reason squarely dismissed the maintenance granted by the Trial Judge to the minor sons, though it was not challenged before him in the said revision petition by the father. The order passed by the learned Sessions Judge is without jurisdiction and the order of the learned Magistrate has to be restored as far as the maintenance of the two sons Gopi and Jayakumar is concerned.

In the result, this revision filed by the revision petitioner Mrs. Ruth is dismissed. The order passed by the learned Sessions Judge by cancelling the maintenance of the two minor sons Gopi and Jayakumar are not aside and the order of the learned Trial Judge is restored.

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