C. Jayaram Mudaliar Vs Lakshmi Ammal

Court: Madras High Court

Date of Decision: March 26, 1940

Citation: AIR 1940 Mad 777 : (1940) 51 LW 758 : (1940) 1 MLJ 877

Hon'ble Judges: King, J

Bench: Division Bench

Judgement

King, J.
This appeal arises out of a suit filed by a husband against his wife for the restitution of conjugal rights. The parties are Hindus and

Mudaliars. The undisputed facts are these. The marriage took place in June, 1916, when defendant was nine years old. It was brought about

largely by an elderly relative of both parties named Ponnambala, who also executed a will making provisions in favour of both parties to take effect

on the death of his widow. About 1921 when Ponnambala was dead and defendant had not yet attained, puberty, plaintiff married a second wife,

also then an immature girl. She was his sister''s daughter. She attained her puberty within a few months, and ever since has lived with the plaintiff.

Defendant attained puberty in 1922 or 1923, but continued to live with her parents. In 1926 occurred the only correspondence between the

parties or their families until shortly before the suit. Plaintiff wrote to both defendant and defendant''s father complaining that defendant had not

been sent to him, and calling upon her father to bring her on one or two auspicious days, threatening legal proceedings if they refused. Defendant''s

fattier replied expressing his anxiety that defendant''s married life with plaintiff should begin, but pointing out that according to custom it was

plaintiff''s duty to come to him and have the nuptial ceremony performed in his house. Nothing further was communicated by plaintiff. In 1927

defendant''s father died. In May, 1936, Ponnambala''s widow died, and plaintiff took possession of certain property under plaintiff''s will. On May

22, a lawyer''s notice was sent to him on behalf of defendant calling upon him to vacate the property, which defendant claimed was hers under the

terms of the will. Within four days of the receipt of this notice plaintiff replied by a lawyer''s notice demanding that defendant should come and live

with him, and he followed up this notice in July by filing the present suit.

2. These are the undisputed facts. The case, as put forward by plaintiff, was that his second marriage was undertaken by him owing to the delay in

defendant''s attainment of puberty. Defendant''s father was so angered by this conduct that he called a caste meeting which resolved that the

members of the caste should henceforward dissociate themselves from plaintiff because he had married his sister''s daughter. Defendant''s family

failed in their duty to inform him of defendant''s puberty and to bring defendant to his house. It was impossible for him, even if it had been

otherwise customary, to go to defendant''s house owing to his bitter resentment at defendant''s father''s actions. Not only in 1926 but on other

subsequent occasions plaintiff attempted through various messengers to persuade defendant''s people to send her, but they refused.

3. The learned City Civil Judge dismissed the suit. He held that plaintiff''s original intention was to marry only his second wife. He was persuaded

by Ponnambala to marry defendant, but after Ponnambala died he had no intention whatever of treating her as his wife. Plaintiff''s letters in 1926

were cold and formal, and were written by him in the certain knowledge that his proposals would be rejected. The other alleged attempts to secure

the company of defendant have not been proved and did not take place. On the other hand plaintiff deliberately rejected overtures made in about

1930 by defendant''s family through D.W. 2 that he should arrange to fetch her. The suit has been filed, not because plaintiff really wanted the

society of his wife, but in order to overcome her opposition to the claims which he put forward under Ponnambala''s will. The grafting of a decree

in a suit of this kind is an equitable relief, and as plaintiff has neglected his wife for this long period, and has brought his suit for the sole purpose just

mentioned he is not entitled to such relief.

4. In the appeal arguments the findings of fact on the question of plaintiff''s attitude are contested, and the case for plaintiff put in this form. It is the

wife''s duty to join the husband. Normally in the caste of the parties, the nuptial ceremony is performed in the husband''s house. Plaintiff may have

been obstinate in insisting upon this condition, but in view of defendant''s father taking the lead in virtually excommunicating him he could not

reasonably be expected to submit to the indignity of approaching him first. In any case defendant is as obstinate as the plaintiff and the delay is as

much due to her as to him. There is no fear of physical violence or cruelty. Plaintiff''s immediate motive for filing the suit is admitted, but it is not

necessarily a sordid motive. It may well be to the advantage of both parties to settle their disputes in regard to, Ponnambala''s will by a general

reconciliation.

5. The foundation of fact upon which this argument must rest is threefold:

(i) The truth of the caste meeting and its resolution.

(ii) The truth of the assertion that the wife''s people must bring the wife to the husband.

(iii) The truth of plaintiff''s case that he has made repeated efforts to secure the company of his wife.

6. The learned City Civil Judge has discussed all these points in detail. On the first question he shows how the caste meeting is not referred to in

plaintiff''s letters in 1926, and how meagre the evidence is which was adduced in its support. Only one witness (P.W. 4) was cited to corroborate

plaintiff, in this matter. The learned Judge says he was ''not impressed with this witness'' and points out that even he says that the resolution was not

put into force and was rescinded in 1931. The learned Judge is clearly right in holding that if ever such a meeting were held there ought to have

been ample evidence to prove it.

7. On the second point the evidence of plaintiff''s own witness is clear that the nuptial ceremony may take place in the house of either party, and

P.W. 2 admits that in the case of defendant''s four sisters all the nuptial ceremonies took place in defendant''s father''s house. The learned Judge

also finds, that, if the ceremony is to take place in the husband''s house, through it may not be necessary for the husband himself to fetch his bride

he should send some relations or friends ceremonially to do so and this plaintiff entirely omitted to arrange for. That finding was not seriously

challenged in the arguments.

8. On the third point the learned Judge has given good reasons for rejecting plaintiff''s explanation that the second marriage was due to his sexual

impatience. He contrasts the legal formalism of plaintiff''s letters in 1926 with the cordial terms in which defendant''s father replies, and in paragraph

14 of his judgment shows how the evidence entirely fails to establish that plaintiff made any other attempts to get his wife. I have been taken

through the whole evidence in the case and can see no reason to differ from the learned Judge''s final conclusion that at no time did plaintiff really

want his wife''s society. It must also be remembered in this connection that defendant''s father died in 1927, so that plaintiff''s chief difficulty

(according to his own contention) was removed nine years before the suit was filed and that according to the evidence of D.W. 2 which the

learned Judge accepts, plaintiff refused in or about 1930 to take the necessary measures to get his wife.

9. The question then arises whether on this view of the facts the learned Judge made a right use of his discretion in refusing plaintiff a decree. It is

not seriously disputed that this relief is discretionary. Whatever may have been said a generation or more ago see Dadaji Bhikaji v. Rukmabai

I.L.R.(1886)Bom. 301, Purushotamdas Maneklal v. Bai Mani I.L.R.(1896)Bom. 610 it is now well established see Bai Jivi v. Narsingh Lalbhai

I.L.R.(1926)Bom. 329, Ude Singh v. Mst. Daulat Kaur ILR (1934)Lah. 892, Rukmani Ammal and Others Vs. T.R.S. Chari, that this discretion

can and should be exercised by a Court. There have been two cases in Lahore, cases, no doubt, in which the parties were Muhammadans, where

the failure of a husband to send for his wife for two and three years respectively after her puberty has entailed the dismissal of his suit see Mt.

Nawab Bibi v. Allah Ditta AIR 1924 Lah. 188 ; Imam Baksh v. Mt. Amiran AIR 1928 Lah. 700. In Bai Jivi v. Narsingh Lalbhai I.L.R.

(1926)Bom. 329 the learned Judges say,

In the absence of legislation it appears, therefore, on the whole that the Court''s desire to consider the entire conduct of the parties so as to be able

to judge whether the plaintiff deserves at the hands of the Court the relief which he seeks, and whether such a relief is not unreasonable in the

particular case against the defendant, (at p. 341.)

10. In Ude Singh v. Mst. Daulat Kaur I.L.R.(1934)Lah. 892 the learned Judges say

The Court in each case will consider the entire conduct of the parties and if it comes to the conclusion that the husband has been guilty of continued

neglect of the wife and has deserted her and the suit has not been instituted bona fide, the suit will be dismissed (at p. 897.)

11. It is true that in (Apturu) Seenayya Reddi Vs. (Apturu) Mangamma, the learned Judges point out that there is no duty cast upon a Hindu

husband to beg his wife to return to him, but that is a case of a wife''s suit for separate maintenance, where the considerations which determine the

result of the suit are not necessarily the same as those in a suit for restitution of conjugal rights; and a case too which can be distinguished on the

facts, for there the wife made no request to the husband to take her. Applying the principles of the Bombay and Lahore cases just quoted, and

bearing in mind the facts in this case that plaintiff has had nothing to do with his wife for 20 years after his marriage, and at least 13 years after she

attained puberty, and that plaintiff has definitely rejected the last offer made by defendant through D.W. 2 in 1930 to join him, I am of opinion that

the learned City Civil Judge was justified in refusing the plaintiff a decree. This appeal accordingly fails, and is dismissed with costs.