

Anom Apang Vs Smt. Geeta Singh

Court: Gauhati High Court

Date of Decision: June 23, 2011

Acts Referred: Constitution of India, 1950 " Article 366
Hindu Marriage Act, 1955 " Section 12, 13(1), 13A, 13B, 2

Citation: (2012) 1 DMC 433 : (2012) 1 JCR 162

Hon'ble Judges: Madan B. Lokur, C.J; Arup Kumar Goswami, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Madan B. Lokur, CJ.

1. The appellant is aggrieved by a judgment and decree dated 6.4.2006 passed by the learned District Judge, Dhemaji in T.S. (D) No. 2 of 2005.

2. The appellant husband belongs to the Adi Tribe in Arunachal Pradesh while the respondent wife is a Hindu. They were married in 1991 in

Pasighat (Arunachal Pradesh). The parties have three children born from the wedlock.

3. The respondent wife alleged that the appellant husband treated her with cruelty and therefore she filed a petition for a divorce u/s 12 read with

13(1)(ia) of the Hindu Marriage Act, 1955 (for short the Act).

4. The appellant husband contested the proceedings and stated that the parties were married according to the Adi customary law. It was also

contended that the appellant husband belongs to a Scheduled Tribe and the provisions of the Act were not applicable to him.

5. On these broad pleadings, the learned District Judge framed the following issues;--

(1). Whether the suit is maintainable?

(2). Whether there is a cause of action for the suit?

(3). Whether the marriage was solemnized in accordance with Hindu Religious Rites or in accordance with Tribal Customary Practice?

(4). Whether the petitioner was treated with cruelty by the respondent as alleged?

(5). Whether the petitioner is entitled to reliefs as prayed for?

6. With regard to the 1st issue, the learned District Judge concluded that the suit was maintainable. With regard to issue No. 3, it was held that the

parties were married according to the Adi tribal customs. With regard to issue Nos. 2 and 4 it was held that there is a cause of action in favour of

the respondent wife and that the activities of the appellant husband amounted to cruelty.

7. Accordingly, while deciding Issue No. 5 it was held by the learned Trial Judge that the respondent wife is entitled to an alternative relief of a

decree of judicial separation u/s 13-A of the Act. With regard to the children born from the wedlock, it was held that time should be given to the

parties for a rapprochement. The children, we are told, are living with the respondent wife.

8. Feeling aggrieved, the appellant husband has filed this matrimonial appeal challenging the decree of judicial separation passed by the learned

Trial Judge.

9. The main submission (and in fact the only submission) of learned counsel for the appellant husband is that the parties were admittedly married

according to the Adi customary law and not according to Hindu rites and therefore, the Trial Judge had no Jurisdiction to entertain the petition

under the provisions of the Act. Alternatively, it is submitted that even if the learned Trial Judge had jurisdiction to entertain the matter, on the

promulgation of Act No. 10 of 2003 passed on 8th January, 2003, the Constitution (Scheduled Tribes) Order, 1950 was amended thereby

including the Adi Tribe from Arunachal Pradesh as a Scheduled Tribe. As such, in terms of Section 2(2) of the Act, the Trial Judge had no

jurisdiction to continue with the matter in so far as the appellant husband is concerned.

10. Section 2 of the Act [we are really concerned with Section 2(2)] reads as follows:

2. Application of Act--(1) This Act applies--

(a). to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo.

Prarthana or Arya Samaj,

(b). to any person who is a Buddhist, Jains or Sikh by religion, and

(c). to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is

proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of

the matters dealt with herein if this Act had not been passed.

Explanation.--The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be--

(a). any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

(b). any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of

the tribe, community, group or family to which such parent belongs; and

(c). any person who is a convert or re-convert to the Hindu, Buddhist, Jains or Sikh religion.

(2). Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribes within

the meaning of Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise

directs.

(3). The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is,

nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

11. The primary question that we are required to answer whether we are dealing with a person who is or is not a Hindu or a Hindu marriage. In

our opinion, the Act, even though it applies to persons, it is in the context of a Hindu marriage and not otherwise. In other words, it is only a Hindu

marriage that can be solemnized according to the Act and it is only a Hindu marriage that can be dissolved under the provisions of the Act. The

pre-condition for the solemnization of a Hindu marriage is that both the parties should be Hindus at the time of marriage. The question before us is

whether both the parties should be Hindus at the time of presentation of a petition for dissolution of the marriage or even at the time of dissolution

of the marriage.

12. In this context, reference may be made to *Vilayat Raj v. Smti. Sunila*, AIR 1983 Del 351 (which is perhaps the only case on the subject)

where a learned single Judge was faced with a similar situation with regard to the applicability of the Act. The question before the learned Judge

was whether, for the applicability of the Act, the parties are required to be Hindus at the time of marriage as well as at the time of filing a petition

for a divorce. The learned Judge answered the question by holding that since the marriage sought to be dissolved under the Act is a Hindu

marriage, it can be dissolved only in accordance with the provisions of the Act. Though Section 2 of the Act says that it applies to a person who is

a Hindu at the time of marriage, the relevant or the crucial factor required to be considered is the date on which the marriage took place and the

manner in which marriage was solemnized.

13. This is what the learned Judge said in paragraphs 28, 29, 34 and 35 of the judgment:

28. As above noticed, according to me, the relevant date on which both the parties must be Hindus, is the date of the marriage; for it is the Hindu

marriage which is being sought to be dissolved. In the case of succession, the relevant date is normally the date when the succession opens and

there are certain provisions which deal with this matter.

29. Further, if the Act is to be interpreted to imply that both the parties must be Hindus or at least the petitioning party must be a Hindu, even on

the date of presentation of the petition, this would make nonsense of the Act in certain cases. For instance, if subsequent to the solemnization of a

marriage in compliance with Section 5 of the Act, both the parties decided to embrace Islam, could the Hindu marriage be repudiated according to

the Islamic tenets? It would appear not. For it is only a Muslim marriage which can be repudiated in that manner. A unilateral dissolution by the

husband on saying ""talaq"", ""talaq"", ""talaq"" cannot be a permissible manner of breaking the bonds of a Hindu marriage.

34. In fact, as already, it would appear to me, that even if both the parties to a Hindu marriage get converted to a religion other than Hindu, their

earlier Hindu marriage can be dissolved only under the provisions of this Act. To hold otherwise, would lead to a very unsettling situation for

society. For, in the instant case, all that the present appellant would have to do is to state that he is no longer a Hindu and, therefore, not bound by

this Hindu marriage contracted earlier. He could then proceed in any manner he liked and repudiate the marriage.

35. According to me a marriage solemnized between two Hindus in accordance with the Hindu ceremonies and rites must be dissolved also in

accordance with the Act; and a petitioner or a respondent or both who have since ceased to be Hindus can approach the Court for this purpose.

For, if both the parties to the marriage together present a petition for divorce by mutual consent in terms of Section 13-B the fact that since such

marriage they have both converted to some other religion should not stand in their way.

14. Insofar as the present case is concerned, undoubtedly, the appellant husband belongs to the Adi Tribe, from Arunachal Pradesh. When the

marriage took place in 1991 as well as when the petition for divorce was presented on 12.11.2001 the appellant husband was a Hindu in terms of

Section 2(1)(c) of the Act. This provides that the Act applies to any person domiciled in India ""who is not a Muslim, Christian, Parsi or Jew by

religion, unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that Law

in respect of any of the matters dealt with herein if this Act had not been passed.

(emphasis given).

15. In the present case, the appellant husband has not shown that he was not governed by Hindu law at the time of marriage or even at the time of

the presentation of the petition for divorce. True he was a member of a tribal community, but he was not a member of a tribal community within the

meaning of Clause (25) of Article 366 of the Constitution. This clause was applicable to him only on the promulgation of Act No. 10 of 2003

passed on 8th January, 2003 when the Constitution (Scheduled Tribes) Order, 1950 was amended thereby including the Adi Tribe from

Arunachal Pradesh as a Scheduled Tribe. But this event occurred several years after the solemnization of the marriage.

16. In our opinion, therefore, even if the parties were married according to the Adi tribal custom, the solemnization of the marriage was, for all

intents and purposes, under the provisions of the Hindu Marriage Act since at that time both parties were Hindus (with the appellant husband being

assumed or deemed to be a Hindu, in the absence of any proof that he was not governed by Hindu law). That one of the parties ceased to be a

Hindu after the solemnization of the marriage does not take away the jurisdiction of the Court to deal with the petition for dissolution of a Hindu

marriage as per the provisions of the Act.

17. The alternative submission of learned counsel for the appellant husband is that after 8.1.2003, when the Adi Tribe was recognized as a

Scheduled Tribe by virtue of the Constitution (Scheduled Tribes) Order, 1950 the learned Trial Judge ceased to have any jurisdiction in the matter

by virtue of Section 2(2) of the Act.

18. In Our opinion, the alternative submission cannot stand even a moments scrutiny. As we have already observed earlier, what is required to be

seen is not the person or personality involved, but the manner in which the marriage was solemnized. In this case, since the marriage was

solemnized in terms of the Act (which included the Adi customary law at the relevant time), the learned Trial Judge would not cease to have

jurisdiction to continue with the matter only because the appellant husband became a member of a Scheduled Tribe in terms of the Constitution

(Scheduled Tribes) Order, 1950.

19. For the reasons Indicated above, we find no merit in this appeal and it is accordingly dismissed.

20. Trial Court records be sent back immediately.