
(1982) 09 KL CK 0009

High Court Of Kerala

Case No: S.A. No. 669 of 1982

Ratnamma and Others

APPELLANT

Vs

Ammalu Amma and Others

RESPONDENT

Date of Decision: Sept. 20, 1982

Acts Referred:

- Cochin Nair Act, 1113 - Section 5

Citation: (1983) KLJ 31

Hon'ble Judges: K. Sukumaran, J

Bench: Single Bench

Advocate: P. K. Balasubramanyan, S. V. Balakrishna Iyer and K. Jayakumar, for the Appellant;

Final Decision: Dismissed

Judgement

K. Sukumaran, J.

In Chingam 1125, before a well lit lamp, Velayudha Panicker presented clothes to Aimnal Amma. Each garlanded the other. There was an exchange of rings. Those who witnessed the ceremony included Saradamma, sister of the bridegroom, Thankappa Panicker, a cousin of the bride and Meenakhsi, a neighbor. It has emerged from the evidence that Thankappa Panicker had married Ratnamma in the year 1128, and that Ratnamma's husband was temporarily absent for some time. Velayudha Panicker appears to have had amoral connections with Ratnamma. A daughter Padmini and a son Chandrababu were born in that connection.

2. As it quite often happens, disputes between the two groups of ladies and their children arose after the demise of Velayudha Panicker, revolving on a claim to the property left by him. Ammalu Amma is the first plaintiff and her sons Thankappan and Unnikrishnan are plaintiffs 2 and 3 in the suit. The property was dealt with by Ratnamma on her own behalf and on behalf of her children under Ext. A5 sale deed dated 24-2-1977 in favor of the 4th defendant. Ratnamma and her minor daughter

and son are respectively defendants 1 to 3. The assignee of the property is defendant No. 4. The suit was for recovery of possession of the plaint schedule property.

3. In respect of the specific averments relating to the marriage between Velayudha Panicker and the 1st plaintiff, the 1st defendant stated in the written statement that the plaintiffs were put to strict proof of such marriage. It was further claimed that the 1st defendant was the lawfully wedded wife of Velayudha Panicker and defendants 2 and 3 were the legitimate children. The 4th defendant, the assignee of the property, made a further plea that he was a bona fide purchaser of the property for value.

4. The plaintiff examined herself as Pw. 1. Saradamma, Velayudha Panicker's sister is Pw. 2 and Meenakshi, the neighbor is Pw. 3. The plaintiff's cousin (son of the maternal aunt of the plaintiff) is Pw. 4. The second plaintiff gave evidence as Pw. 5. It was mainly to mark his S.S.L.C. book, in which the name of "Velayudhan" occurred in the column relating to the name of the parent or guardian. The initials contained therein were K K. According to Pw. 5 they were denoting "Kizhakka Kaipallil Kesava Panicker," and was applicable to his father. Ext. A1 also is the S.S.L.C. book relating to the 2nd plaintiff, where the irate Velayudhan occurs in the column; "name of father." Pw. 6 Village Officer (a witness though summoned by the defendants had been abandoned by them, but permitted to be examined by the court as a plaintiff's witness as per order dated 27-11-1978 in I.A. No. 5025 of 1978), gave supporting evidence to show that plaintiffs 2 and 3 were the sons of Velayudha Panicker, whose marriage with the rival claimants came up for consideration in the suit.

5. Significantly enough, the 1st defendant evaded the witness box.

6. In fairly elaborate discussion, the entire evidence was considered by the trial court. The evidence of the plaintiff's witness commended itself for acceptance by the trial court, and if I may say so, for very proper and justifiable reasons. The requirements of a valid marriage were accordingly found to be established to the hilt, by the positive evidence in the case adduced on behalf of the plaintiffs. This finding has been concurred in by the lower appellate court. The evidence has been referred to in the opening portion of the judgment (paragraph 5) and the agreement of the lower appellate court with the appreciation of the evidence by the trial court is explicitly expressed in paragraph 10 of the judgment. Though a contention was raised that there was no independent reappraisal of the evidence in the case, that is unjustified, on a proper reading of the judgment of the court below. The fact that Pws. 1 to 4 were put to severe test in cross-examination by counsel for the defendants in order to discredit them and that such an attempt had proved to be of no avail, has been clearly stated by the lower appellate court. It has been further stated that that court did not see any reason to reverse the finding on going through the depositions of those witnesses. The absence of specific plea of the 1st defendant in the written statement in relation to the question of marriage, noted by

the trial court, was also given proper emphasis by the lower appellate court. These findings of fact based on evidence are eminently justified in the circumstances and are correct. There is absolutely no ground whatever for doubting the correctness of the conclusions of the courts below on this point.

7. The only legal contention which remains to be considered relates to the question whether the marriage, though solemnized in the manner required by law, was nevertheless null or void, for the reason that Ammalu Amma, at the time of her marriage, was only aged 15 and thus, below the age of 16, which is the age fixed for a female to be married, under the provisions of Section 5 of the Cochin Nair Act, 1113. That section reads as follows:

No marriage solemnized after the date of this Act of a female under 16 years of age or of a male under 21 years of age shall be valid.

8. The courts below have held that the mere fact that one of the spouses was below the age statutorily fixed for the marriage did not result in the marriage being null or void. The statutory scheme had been analyzed, in support of such a claim. The lower appellate court particularly, has with commendable clarity, analyzed the legal provisions and adverted to the relevant legal principles. The approach of the courts, in such matters, is not to rush to invalidate a marriage for unsubstantial infraction of legal provisions which do not go to the root of the matter. That is the pervading spirit of judicial decisions starting from *Caterrall v. Sweetman*, (1845) 9 Jur. 951 and ending up with the decision of the Supreme Court in *Lila Gupta v. Laxmi Narain*, AIR 1978 S.C 1351, which latter decision authoritatively lays down the legal principles applicable after exhaustive survey of the case law and the analysis of an analogous statutory scheme, viz., Hindu Marriage Act 25 of 1955. In circumstances such as the one in the present case, a contravention of the statutory provision like Section 5 of the Act does not render the marriage void but merely invalid. The course of the marriage is unaffected. The parties are subject to a binding tie of wedlock from the marriage. May be, the violation of Section 5 is punishable in the manner referred to in Sections 7 and 8 of the Act with imprisonment or with fine. The marriage, however, is not void; the woman is not denied the status of the wife. The children, *a fortiori*, cannot be denied the status of legitimate issues.

9. Years back. Lord Phillimore observed:

In deciding upon a case where the customs and the laws are so different from British ideas, a court may do well to recollect that it is a possible jural conception that a child may be legitimate, though the parents were not and could not be legitimately married.

(vide *Khoo Hooi Leang v. Khoo Hean Kwee*, 1926 A.C. 529), It is unnecessary for the purpose of this case to lean on to the crutch of that observation, in an attempt to salvage the legitimacy of plaintiffs 2 and 3, for, notwithstanding the contravention of Section 5 of the Act, the connection between the 1st plaintiff and Velayudha

Panicker, is one of a valid marriage as contemplated under the Act, in the light of the legal principles applicable.

10. The case of the 4th defendant about his being a bona fide purchaser had been concurrently rejected on an appreciation of the evidence in the case. No interference is justified with such a finding.

11. There is no substance in the grievance of the applicants as regards the order of the court below rejecting the prayer for adducing additional evidence in the appellate court and rejecting the request for remand. The circumstances in the case are such that the action of the court below is fully justified. The lower appellate court has correctly observed that no request for adducing further evidence or an adjournment for that purpose had been sought for before the trial court. The disparate attempt before the appellate court for the protraction of the litigation was rightly discountenanced. Counsel made a passionate plea that the dismissal of the second appeal would stamp defendants 2 and 3 with illegitimacy. If such results follow from the indiscretion committed by the 1st defendant, innocent though they may be, they will have inevitably to suffer the stigma. Courts of law are helpless where such misfortunes befall the offsprings of extra marital alliances.

In the light of the above discussion, the second appeal fails and it is accordingly dismissed.