
(1992) 01 MP CK 0016
Madhya Pradesh High Court
Case No: S.A. No. 110 of 1985

Biaga		APPELLANT
	Vs	
Sundariya and Others		RESPONDENT

Date of Decision: Jan. 9, 1992

Acts Referred:

- Evidence Act, 1872 - Section 14

Citation: (1992) 1 DMC 482

Hon'ble Judges: D.M. Dharmadhikari, J

Bench: Single Bench

Advocate: S.C. Pandey, for the Appellant; Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

D.M. Dharmadhikari, J.

This second appeal is by the plaintiffs who lost in both the Courts below. The appeal has been admitted on the following substantial questions of law, which arises for decision by this Court.

"(i) Whether in the absence of any pleading and proof about the custom between the parties for the marriage in Pat form, the marriage in that form will be a valid marriage?

(ii) Whether in the absence of proof of custom for performance of marriage in the Pat form no inference of the valid marriage can be drawn even from long cohabitation."

2. The necessary facts are that the owner of the suit property was one Macha who died prior to 1956, survived by one son by name Radho who is also dead and is represented now by his alleged wife Smt. Sundariya (respondent No. 1). The property in suit was sold by Sundariya (respondent No. 1).. by four registered sale deeds Ex. D 1 to Ex. D4 dated 28.2.1978 in favour of respondents No. 2 to 5.

3. The suit originally was filed by two daughters of Macha namely Jhamlibai and Ramlibai. The above two plaintiffs are represented now by their legal representatives/ appellants No. 1 to 3 and respondents No. 6 to 7. The suit was filed by two daughters of Macha challenging the alienation made by respondent No. 1 Sundariya in favour of respondents No. 2 to 5, pleading inter alia that Sundariya was not the legally wedded wife of deceased Radho and, therefore, had no right to alienate the property to which, the plaintiffs claim title by inheritance. Both the Courts below held that presumption of valid marriage can be drawn between Radho and Sundariya on the basis of their long cohabitation as husband and wife. The suit was, therefore, dismissed by both the Courts holding in favour of Sundariya that she alone inherited the property and had the right to sell the same in favour of respondents No. 2 to 5.

4. Learned Counsel appearing for the appellants/plaintiffs, in this appeal, invited my attention to paragraph 6 of the plaint and paragraph 5 of the written statement and contended that there was no proper plea of custom of PAT marriage set up by the defendants between Radho and Sundariya and hence the evidence led of PAT marriage could not be looked into and relied upon in favour of Sundariya. Reliance is placed on the decision in the case of [Kochan Kani Kunjuraman Kani Vs. Mathevan Kani Sankaran Kani](#),

5. Learned Counsel appearing for the respondents, in reply submitted that due to long course of cohabitation as husband and wife between the parties there was a presumption of valid marriage between them and the burden to rebut such presumption lay on the plaintiffs. In this connection it was pointed out that the defendants examined witnesses to depose that both Radho and Sundariya had gone through a ceremony of PAT marriage and lived as husband and wife thereafter. In reply it is also contended that there was no cross-examination on behalf of the plaintiff to -- deposition of the witnesses examined by Sundariya that PAT marriage required only certain ceremonies and not all, such as Saptpadi and Hom.

6. I have myself looked into the pleadings of the parties and the relevant evidence led on the question of PAT marriage by defendant by examining Bhaiyalal (D.W. 1) and Sohanlal (D.W. 2). It is settled law that a presumption of valid marriage can be drawn u/s 114 of the Evidence Act if there is a long course of cohabitation as husband and wife between the parties. [Gokal Chand v. Parveen Kumari (AIR 1952 S.C. 231)]. Such a presumption based on long course of cohabitation is, however, rebuttable. It is true that in this case the main contesting issue between the parties was about the valid marriage between Radho and Sundariya. The case of the plaintiffs was that Sundariya was only a keep of Radho, whereas the case of the defendants was that a ceremony of PAT marriage was gone through. It was, therefore, essential to plead custom of such PAT marriage in the Marar community, to which the parties belong. I, however, find that even in the absence of plea of such a custom when the evidence was led by the defendants. to prove such a custom by

examining Bhaiyalal (D.W.1) and Sohanlal (D.W.2.) no objection based on such want of plea of custom was raised by the plaintiffs in the Court below. It is also to be noted that the witnesses examined on behalf of the defendants Sundariya deposed that ceremony of PAT marriage was only by tying in knots clothes of bride and the groom and taking of steps around a temple. The plaintiffs did not cross-examine the above named witnesses on the point that there did not exist any such custom of PAT marriage. The witnesses examined by the plaintiffs also did not say in their depositions that there is no custom of PAT marriage in the Marar community. It is admitted by the parties that Radho had lost his wife and Sundariya had lost her husband at the time when they went through ceremony of second marriage. Plaintiff Jhamli Bai as P.W.1, in paragraph. 4 of her cross-examination admitted the fact that Radho and Sundariya had lived jointly as husband and wife for a long period of about eleven years. In the state of above evidence led on the question of second marriage, the Courts below committed no error in coming to a conclusion that validity of marriage is beyond question by the plaintiffs. In my opinion also, as in this case evidence was allowed to be led without objection by the plaintiffs on the alleged fact of PAT marriage, the contention raised in the second appeal of want of specific plea of custom cannot be accepted.

7. Consequently, this second appeal fails and is hereby dismissed with costs. Counsels fees shall be as per schedule if certified.