
(2002) 10 AP CK 0025

In the Andhra Pradesh High Court

Case No : Appeal No. 1565 of 1986 and Cross-Objections

Dr. M. Satyanarayana Reddy and Another	APPELLANT
Vs	
Rukma Bai and Others	RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Hindu Marriage Act, 1955 — Section 17, 5
Hyderabad Penal Code, 1324 — Section 421
Penal Code, 1860 (IPC) — Section 494

Citation : (2003) 6 ALT 248

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V. Ravikiran Rao, for the Appellant; B.V. Bakshi and M.P. Ugle, for the Respondent

Judgement

P.S. Narayana, J.—Defendants 1 and 2 in O.S.No. 58/82 on the file of District Judge, Adilabad, aggrieved by the Judgment and decree of the trial Court had preferred the above Appeal and defendants 5 to 9 had preferred the Cross Objections wherein they had questioned the marriage of Rajeshwar Reddy with the 1st plaintiff and the 2nd defendant.

2. For the purpose of convenience the parties will be referred to as plaintiffs and defendants only as shown in O.S.No. 59/82.

3. The said suit was filed by the plaintiff for partition and separate possession of 22/45th share in the plaint schedule properties. The trial Court after the respective pleadings of the parties and settlement of Issues had examined P.W.1 to P.W.5, D.W.1 to D.W.12 and had marked Exs.A-1 to A-16 and also Exs.B-1 to B-173 and ultimately had passed a preliminary decree and aggrieved by the same, the present appeal and the Cross-Objections had been preferred.

4. The plaintiffs had pleaded in the plaint as follows:

The suit properties consisting of Ac.2-26 guntas situated in Adilabad Revenue

village and a house situated in Adilabad town and cash which is in deposit in Andhra Bank branch, Adilabad are the self acquisitions of late Rajeshwar Reddy. The said Rajeshwar Reddy died leaving behind three widows namely Rukma Bai (1st plaintiff), Shankaramma (2nd defendant) and Mallamma (8th defendant). The plaintiffs 2 to 5 and 7 and 8 are the daughters and 6th defendant is the son of Rajeshwar Reddy through the 1st plaintiff. 1st defendant is the son and defendants 3 and 4 are the daughters of Rajeshwar Reddy through the 2nd defendant. Defendants 5, 6 and 7 are the sons and the 9th defendant is the daughter of Rajeshwar Reddy through the 8th defendant. Rajeshwar Reddy died intestate on 16-8-1981 leaving behind the plaintiffs and defendants 1 to 9 as his legal heirs. The plaintiffs 2 to 8 are entitled for 1/15th share each and the 1st plaintiff is entitled to 1/45th share in the suit properties. The defendants, 1, 3 to 7 and 9 are entitled for 1/15th share each and defendants 2 and 8 are entitled to 1/45th share each in the suit properties. Thus the plaintiffs 1 to 8 are entitled to 22/45th share in the suit properties. In spite of repeated demands the defendants failed to effect partition of the suit properties and to deliver the plaintiff's share. The plaintiff also got issued a notice through their Advocate on 16-12-1981 demanding partition and separate possession of their share. In spite of service of the said notice the defendants have neither replied nor partitioned the suit properties. There were quarrels amongst the woman folk. Hence for the sake of convenience, the 1st plaintiff started residing in a separate house. The 1st defendant also started living in a separate house to avoid quarrels between the women folk and all the properties remained undivided. The marriage of the plaintiff with Rajeshwar Reddy was celebrated in the year 1952. After the death of Rajeshwar Reddy the defendants are not giving any share in the crops and the rents from the suit properties to the plaintiffs. Hence the suit for partition and separate possession of the plaintiff's share in the suit properties.

5. Defendants 3 and 4 were set ex parte. The 1st and the 2nd defendants who had preferred the present Appeal had filed a written statement with the following allegations:

It is true that the 2nd defendant is the legally wedded wife of late Rajeshwar Reddy and the 1st defendant is the son and defendants 3 and 4 are the daughters of 2nd defendant through Rajeshwar Reddy. The 1st plaintiff is not the wife of late Rajeshwar Reddy, but she was only his kept mistress. The plaintiffs 2 to 8 are the children of the 1st plaintiff born through late Rajeshwar Reddy and as their mother i.e., 1st plaintiff was only a kept mistress they are not the legal heirs of Rajeshwar Reddy and therefore they are not entitled to succeed to his properties i.e., land, house and also cash which is in deposit of Andhra Bank, Branch Adilabad. Likewise, 8th defendant also was not the wife of late Rajeshwar Reddy, but she was his kept mistress. Defendants, 5,6,7 and 9 are the children born to her through late Rajeshwar Reddy. The defendants 5,6,7 and 9 are the legitimate children of late Rajeshwar Reddy and their mother i.e., the 8th defendant, who was only a kept mistress and as such they are not the legal heirs of late Rajeshwar Reddy and they cannot succeed to his properties i.e., land, the

house and the cash which is in deposit in the Andhra Bank, Branch Adilabad. It is true that the Rajeshwar Reddy died intestate on 16-9-1981 at Adilabad leaving behind the defendants 1 to 4 as his legal heirs. The defendants 1 and 2 alone are in joint possession of the suit properties of late Rajeshwar Reddy. Late Rajeshwar Reddy had left Rs. 22,500/- in deposit in S.B. Account in Andhra Bank Branch, Adilabad. In one portion of the suit house the 2nd defendant is residing and in the rest of ten portions there are tenants. The 2nd defendant is collecting the rents from the said tenants. The defendants 1 and 2 are paying the tax for the suit house and land revenue for the suit lands. The plaintiffs and defendants 5 to 9 are not entitled for any share in the suit properties. After receipt of the notice from the plaintiffs the 1st defendant approached the elders and they called the 1st plaintiff and explained to her with regard to her status as kept mistress and status of her children as illegitimate children and the 1st plaintiff agreed not to proceed in any court of law against the 1st defendant and so the 1st defendant did not choose to give any reply to the plaintiff's notice. The 1st defendant is having medical practice at Adilabad since 1972. In 1980 the 1st defendant constructed his own house at Adilabad and shifted to that place. Prior to the construction of his house the 1st defendant used to live with his wife and children in the suit house with his father and mother. There were no quarrels between the women folk as alleged by the plaintiffs. The 1st plaintiff and the 8th defendant used to work as labourers under late Rajeshwar Reddy in his contract works. In that connection Rajeshwar Reddy came in contact with them and he kept them as his mistresses, but he did not marry them. Late Rajeshwar Reddy gave houses to the 1st plaintiff and the 8th defendant and he also educated their children and performed the marriages of their children. All the religious functions and marriages were performed by Rajeshwar Reddy and the 2nd defendant only. The 8th defendant and the 1st plaintiff never participated in any religious functions with late Rajeshwar Reddy. Late Rajeshwar Reddy had also kept mistresses by name Achamma and Laxmi @ Madhavi. The plaintiffs and defendants 5 to 9 were never in joint possession of the suit properties with the defendants 1 to 4. Hence the plaintiffs are not entitled or any share in the suit properties.

6. Likewise, on behalf of defendants 5 to 9, a written statement was filed with the following allegations:

The 8th defendant alone is the legally wedded wife of late Rajeshwar Reddy and their marriage took place on 6-4-1946. The defendants 5 to 7 and 9 are the sons and daughters of late Rajeshwar Reddy through the 8th defendant. The 2nd defendant joined the company of late Rajeshwar Reddy in the year 1948 and at that time the 2nd defendant was having 1st defendant with her and the 1st defendant was aged about one or 11/2 years old at that time. Thus the 2nd defendant was not the legally wedded wife of late Rajeshwar Reddy. The 1st plaintiff also is not the legally wedded wife of late Rajeshwar Reddy and that she was his kept mistress. The 1st plaintiff has got her married husband and he is living with the 1st plaintiff even to-day and the plaintiffs 2 to 8 are not the children of late Rajeshwar Reddy. Hence they are not entitled to claim any share

in the suit property and they never lived jointly with Rajeshwar Reddy. It is true that notices were issued to the defendants 5 to 9 by the plaintiffs, but they did not choose to give any reply as the claim of the plaintiffs was false. The plaintiffs and defendants 1 to 4 are not entitled for any share in the suit properties. Plaintiffs have not shown all the properties which were left behind by Rajeshwar Reddy and as such the suit is bad for not showing all the properties. Further one Achamma who is also one of the married (wives) of Rajeshwar Reddy is not made as a party to the suit.

7. Subsequent thereto the said Achamma was impleaded as a party, but however, she remained ex parte.

8. On the strength of the pleadings of the respective parties the trial Court has settled the following Issues:

(1) Whether the plaintiff No. 1 is the legally wedded wife of late Sri Rajeshwar Reddy and entitled to inherit to his properties?

(2) Whether plaintiff No. 2 to 8 are legitimate children of late Sri Rajeshwar Reddy and are entitled to inherit to his properties?

(3) Whether the defendant No. 2 is the legally wedded wife of late Sri Rajeshwar Reddy and entitled to inherit to his properties?

(4) Whether the defendants 1, 3 and 4 are the legitimate children of late Sri Rajeshwar Reddy and entitled to inherit to the properties?

(5) Whether defendant No. 8 is the legally wedded wife of late Sri Rajeshwar Reddy and entitled to inherit to his properties?

(6) Whether defendant Nos. 5,6,7 and 9 are legitimate children of late Sri Rajeshwar Reddy and entitled to inherit to his properties?

(7) Whether the plaintiffs are in joint possession of suit properties along with the other parties to the suit?

(8) Whether the plaintiffs have paid the correct Court fee?

(9) Whether the defendants 1 to 4 only are entitled to inherit to the suit properties?

(10) To what relief?

9. As already stated supra, on appreciation of both oral and documentary evidence which had been let in by the parties, a preliminary decree was passed and that is how the present Appeal and the Cross-Objections had been preferred as already specified supra.

10. Sri Ravi Kiran Rao, the counsel appearing for the appellants in the present Appeal had contended that the trial Court had ignored the aspect that no presumption of law will arise of a lawful wedlock between a man and a woman

though there is long cohabitation when the man was already married and the earlier marriage is subsisting. The learned Counsel further contended that the mere description of the parties showing as husband and wife in voters list will not give raise to a presumption regarding the validity of marriage unless there is clear proof relating to the same. The learned Counsel further had taken me through the findings which had been recorded by the trial Court and had contended with all vehemence that the trial Court had totally erred in appreciating the oral and documentary evidence as well and is not justified in granting a preliminary decree in favour of the plaintiffs.

11. Sri Ugle, counsel representing the Cross-Objectors had made the following submissions. The learned counsel contended that there is overwhelming oral and documentary evidence establishing that the 8th defendant is the legally wedded wife of the said Rajeshwar Reddy and defendants 5 to 7 and 9 are their children. The learned Counsel also had taken me through the evidence of D.W.7 and D.W.9 and also Exs.B-165, B-168, B-169, B-173 and also Exs.B-149, B-153, B-160 to B-164 and also Exs.B-155 to B-159. The learned Counsel also pointed out even in respect of the 2nd defendant there is no evidence relating to the date of marriage and the learned Counsel also had pointed out that in view of the long cohabitation and when a man and a woman cohabits for sufficiently a long time, a presumption can be drawn in favour of a valid marriage. The learned Counsel also had pointed out certain findings which had been recorded by the trial Court relating to the validity of the marriage of 8th defendant and had submitted that the said findings are based on evidence. The learned Counsel also had drawn my attention to certain paragraphs in Mitra's Hindu Law and had pointed out that polygamy in olden days was permissible even amongst Hindus and no doubt the learned Counsel pointed out that in certain areas bigamous marriages were prohibited by introducing certain Legislations and the marriages in the present suit are not such marriages and in the absence of any prohibition by law, it can be taken that these marriages are valid marriages and the children who were born out of such marriages are the legitimate children of the deceased Rajeshwar Reddy and they are entitled to their respective shares as per law. The learned Counsel also had placed reliance on *Badri Prasad Vs. Dy. Director of Consolidation and Others*, *Kashinath v. Bhagwandas*, AIR 1947 P.C. 168, *The State of Bombay Vs. Narasu Appa Mali*, .

12. Sri Bakshi, the learned Counsel representing the contesting respondents/ plaintiffs on the other hand had pointed out that these parties belong to Adilabad District, the erstwhile Telangana area. The learned Counsel further pointed out that it is no doubt true that monogamy was imposed by certain statutes both in Bombay and Madras Provinces in 1946 and 1949 respectively. But as far as Hyderabad Part-B, State is concerned, till the bar or prohibition imposed by the Hindu Marriage Act came into operation, there was no such prohibition at all. The learned Counsel also had pointed out that the trial court on appreciation of both oral and documentary evidence had arrived at the correct conclusion relating to the validity of the marriages and ultimately had decreed the suit and absolutely

there is no infirmity in any of the findings recorded by the trial Court. The learned Counsel further had placed reliance on some passages in Hindu Law by Mayne, Paras Diwan and also S.N. Mitra and had commented that the uniform view expressed by the learned authors is to the effect that there was no prohibition of taking more than one wife even under the old Hindu Law. The learned Counsel also had placed reliance on *Binda v. Kaunsilla* ILR 13 All. 126 *Thapita Peter v. Lakshmi* ILR 17 Mad.235 *Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another*, and *Anr., Gopal Lal Vs. State of Rajasthan*, and also the decision of Bombay High Court referred (3) supra. The learned counsel also had taken me through the Hyderabad (Application of Central Acts) Act, 1952 and also the Adoption of Laws, 1957. The learned Counsel also pointed out that Section 421 of the Hyderabad PenalCode 1324 Fasli which was in force till the merger, is in pari materia with Section 494 I.P.C. and the words used in the provision are ".....marriage being void.." and hence these provisions also will not in any way invalidate any of the marriages which had been upheld by the trial Court.

13. Heard the counsel on record and also perused the oral and documentary evidence available on record.

14. Though elaborate arguments had been advanced by the learned Counsel representing the respective parties, the Points which arise for consideration in this Appeal can be framed as hereunder:

(1) Whether the 1st plaintiff, the 2nd defendant and the 8th defendant are the legally wedded wives of Sri Rajeshwar Reddy?

(2) Whether the children of these wives who are impleaded as parties, are entitled to their respective shares?

(3) If so, to what relief the parties are entitled to?

15. Points 1 and 2 for the purpose of convenience can be discussed together. The plaintiff A schedule properties are the self-acquired properties of late Rajeshwar Reddy and the cash shown in the plaintiff B schedule was deposited by late Rajeshwar Reddy in Andhra Bank, Adilabad. Rajeshwar Reddy originally belonged to Karimnagar and he came over to Adilabad and Buchamma, his sister, had brought up Rajeshwar Reddy and she died in the house of Rajeshwar Reddy at Adilabad in the year 1965. The suit house was constructed by Rajeshwar Reddy in the year 1955 and thereafter he had shifted his residence to that house and lived there till he died. The said Rajeshwar Reddy after coming over, to Adilabad had been doing civil contract works for some time and he was also a Forest contractor and he was also doing timber business and had established saw mills too. The said Rajeshwar Reddy died intestate on 19-9-1981 and it is needless to state that he was a Hindu by religion and sudra by caste. The plaintiffs 2 to 5 and 7 and 8 are the daughters and the 6th plaintiff is the son of the 1st plaintiff and the 1st defendant is the son and defendants 3 and 4 are the daughters of the 2nd defendant. Likewise, defendants 5 to 7 are the sons and the 9th

defendant is the daughter of the 8th defendant and the 10th defendant has no issues. There are all the children of late Rajeshwar Reddy and he brought them up and had maintained them and had given education also to them and had celebrated the marriages of the certain of the daughters. The case of the plaintiffs is that the 1st plaintiff is the legally wedded wife of the said Rajeshwar Reddy and the other plaintiffs are the children and hence they are entitled to 22/45th share in the properties left by Rajeshwar Reddy, being the legal heirs. It is pertinent to note that though the paternity of the children is not in serious dispute, the marriages of the 1st plaintiff and defendants 2 and 8 with Rajeshwar Reddy had been disputed by the parties in the respective pleadings. The trial Court on appreciation of the oral and documentary evidence in detail and after examining the depositions very carefully had arrived at the conclusion that the marriages had been established and hence all the parties are entitled to their respective shares.

16. The 1st plaintiff was examined as P.W.1 who had deposed in detail about the factum of marriage between herself and Rajeshwar Reddy. P.W.1 deposed that her marriage with Rajeshwar Reddy was celebrated about 32 years ago at Pedda matam temple according to their caste custom and she also further deposed that in the marriage ceremony Akshintalu were put by all the persons who attended the marriage and she poured Akshintalu on her husband and he also did the same and then Zilakara Bellam was put on her head and she put the same on her husband's head and afterwards Mangalasutram was tied in her neck by her husband. P.W.1 in fact had narrated the other details also and her evidence was well supported by P.W.2, a resident of Adilabad who had deposed about the factum of marriage and also the purohit who had officiated during the celebration of the said marriage and P.W.2 had given several details relating to the caste of Rajeshwar Reddy and how the marriage was celebrated as per the case custom and how the purohit had performed several rituals which are to be performed at the time of celebration of marriage and also the tying of Mangalasutram around the neck of P.W.1 by Rajeshwar Reddy. P.W.2 also is a person who has knowledge about the other family affairs of the said Rajeshwar Reddy and he had given several other details. P.W.2 also deposed that after the marriage with P.W.1, P.W.1 was living with Rajeshwar Reddy and the 1st wife of Rajeshwar Reddy is Shankamma and the second wife is Mallamma and P.W.1 is the third wife and he also further deposed that they have been treating Rajeshwar Reddy and P.W.1 as husband and wife only in their community and also in the friends circles. Apart from the evidence of P.W.1 and P.W.2, P.W.3 - the mother of the 1st plaintiff also was examined who had given the details about the celebration of marriage and also the purohit who had celebrated the said marriage at Pedda matam. P.W.5 - Muralidhar Rao, a retired Teacher also had deposed about the marriage. But however, he had admitted in his cross-examination that he had not attended the marriage as such.

17. As can be seen from the evidence, the marriage which was celebrated between the 1st plaintiff and Rajeshwar Reddy was attended by many people and

the ceremonies also were performed in this regard. The details had been well narrated and it is not in dispute that the parties belong to Hindu religion and to Munnurukapu caste - a sudra community. The 1st defendant was examined as D.W.1 and the 2nd defendant was examined as D.W.2. The 1st defendant had deposed as D.W.1 that the plaintiffs 2 to 8 are born to his father through P.W.1 and his father was maintaining the plaintiffs and the marriage of the 2nd plaintiff was celebrated by his parents and he also deposed that except the marriage between his father and P.W.1 both were living together. As can be seen from the evidence of this witness, it appears an attempt was made to show that the 1st plaintiff is not the legally wedded wife of Rajeshwar Reddy, but she was only a kept mistress or a concubine, as the case may be. But however, the evidence referred to supra is clear and categorical, especially the evidence of P.W.2 who in fact had narrated all the details of the family and who had been cross-examined at length. But however, the defendants were not successful in any way in discrediting the testimony of this witness. Apart from this evidence, the 2nd defendant as D.W.2 also had deposed about the marriage of P.W.1 and the celebration of marriage of the children of the 8th defendant by them. D.W.2 also deposed that in the marriage of the 2nd plaintiff, herself and her husband had washed the feet of the daughter and the son-in-law and the marriage was celebrated at Peddamatam and the marriage arrangements were made by her husband and P.W.1 and that Peddamatam is also called as Gopala Krishnamatam, and she also deposed that she does not know what properties are given to P.W.1 by her husband.

18. The 8th defendant, the other wife, was examined as D.W.7 who had no doubt deposed that she knows only two daughters of P.W.1 and they are born the Rajeshwar Reddy and except plaintiffs 2 and 3 she does not know any other children of P.W.1. She also further deposed that she along with P.W.1 had attended the marriage of D.W.1 at Hyderabad. The 6th defendant, who was examined as D.W.8, had stated in cross-examination that P.W.1 was known to this witness since the year 1964 and he saw her when she came to the house to give send-off to D.W.1 when he got seat in M.B:B.S. and he does not know who brought her to the house and nobody had introduced him and D.W.1 touched the feet of P.W.1 to have her blessings and P.W.1 was occasionally coming to the suit house when there are functions or marriages.

19. Apart from the oral evidence, Exs.A-3, A-4, A-9, A-10, A-16 the photographs, and Exs.A-6 to A-8 - the negatives, also point out that the stand taken by the plaintiffs is a well justified stand. The 2nd defendant as D.W.2 also had made certain admissions relating to Exs.A-3 to A-5. The 8th defendant as D.W.7 had admitted in cross-examination about these photographs. Apart from this documentary evidence, Ex.A-11 - legal notice, Exs.A-12 to A-14 - acknowledgments, Ex.A-15 - returned envelope of the 7th defendant and Ex.A-16 -a photograph, also had been relied upon. As can be seen from the evidence which had been adduced by the parties, though a half hearted attempt was made by defendants 1 and 2 to contend that the 1st plaintiff is only the kept

mistress of Rajeshwar Reddy, several of the admissions made by both the defendants 2 and 8 and also the 1st defendant as D.W.1, clearly go to show that the said stand is not a sustainable one. Further, it is also pertinent to note that Exs.B-169, B-169(b), B-171, B-173(a) - the voters list, also point out in favour of the stand taken by the 1st plaintiff relating to the factum of the marriage or the validity of the marriage. In Sumitra Devi Vs. Bhikan Choudhary, the Apex Court held that public records including the voters list describing the parties as husband and wife can be taken into consideration. Apart from this aspect of the matter, when a man and a women live together as husband and wife for sufficiently a long time, strong presumption arises in favour of the wedlock and the proof as to factum of marriage by examining the priest and other witnesses in such a case is not necessary. This was the view expressed by the Apex Court in the decision referred (1) supra. The same view was expressed in Bikash Kumar Mukherjee and Others Vs. Smt. Nanda Rani Mukherjee and Others, , Parameshwari Bai Vs. Muthojirao Scindia, , Chintagunti Jagannadham Vs. Chintagunti Savithramma, , Nagarajamma v. State Bank of India, 1961 ALT 142 = 1961 (1) An.W.R. 65 and Raghuvir Kumar and Another Vs. Shanmughavadivu and Others, .

20. There is not much controversy about the fact that the 2nd defendant is the legally wedded wife as far as the plaintiffs are concerned, but however, defendants 5 to 9 had raised a dispute relating to the same. But, as can be seen from the admissions which had been referred to supra and also from the evidence of D.W.2, it is clear that there cannot be a serious dispute about the said marriage. D.W.2 had deposed that her marriage was celebrated with Rajeshwar Reddy when she was about 10 years old and Rajeshwar Reddy was 16 years old and she had narrated several details of the family, which would clearly establish that she is the legally wedded wife of Rajeshwar Reddy. A close relative of D.W.2 was examined as D.W.3 who had deposed about the said marriage. D.W.3 deposed that the 2nd defendant and Rajeshwar Reddy are the husband and wife and their marriage took place in or about the year 1939 and he was present at the time of marriage and the marriage was settled by his mother-in-law Ramalakshmi of Karimangar. The evidence of D.W.3 and the way in which he had deposed giving several particulars of the family, definitely will inspire confidence and he also deposed about the ceremonies which were performed at the time of marriage of the 2nd defendant with Rajeshwar Reddy. Though there was lengthy cross-examination, the credibility of this witness could not be assailed in any way.

21. Apart from the evidence of D.W.2 and D.W.3, there is also the evidence of D.W.4, D.W.5 and D.W.6 to prove that D.W.2 has been living with Rajeshwar Reddy as his wife for a longtime and she had been treated as the wife of Rajeshwar Reddy by all the relatives, friends and the society as such. D.W.4 is a retired Police Officer and he had deposed that the 2nd defendant is the wife of Rajeshwar Reddy and he was a neighbour while working at Adilabad. He had narrated certain details of the family also. D.W.5 is also a resident of Chinna

Matam of Adilabad and a neighbour of Rajeshwar Reddy and he also deposed about the factum of marriage between the 2nd defendant and Rajeshwar Reddy. He also gave the details of the children. D.W.6 worked as a servant under Rajeshwar Reddy who also deposed that the 2nd defendant is the wife of Rajeshwar Reddy. These witnesses are independent witnesses and it is also clear from the evidence that the 2nd defendant has been living with Rajeshwar Reddy and both of them had been treated by the society as such for sufficiently a long time as husband and wife and hence at this distant point of time, the said marriage cannot be disbelieved. P.W.2 also in the evidence had stated that the 2nd defendant is the first wife of Rajeshwar Reddy. The evidence of D.W.8 also throws some light on this aspect. D.W.10 also had deposed that the 2nd defendant is the wife of late Rajeshwar Reddy. D.W.12 also deposed that late Rajeshwar Reddy had two wives and he also deposed about the children of Rajeshwar Reddy. The 1st defendant as D.W.1 had deposed that Rajeshwar Reddy had taken life insurance policy during the life time and he was paying premium also and in the said policy the 2nd defendant was shown as the nominee. Exs.B-52 to B-54 are the premium notices issued to Rajeshwar Reddy and the 2nd defendant was shown as wife in the said insurance policy. In the school register of the 1st defendant - Ex.B-57, his father's name was shown as Rajeshwar Reddy. Apart from it, the 2nd defendant also can be seen in the photographs Exs.A-4 and A-5 and also Exs.B-155 and B-159 and hence the findings which had been recorded by the trial Court relating to the validity of the marriage of Rajeshwar Reddy with the 2nd defendant cannot be assailed in any way.

22. Now, coming to yet another marriage with the 8th defendant, the plaintiffs themselves had admitted that the 8th defendant is the second wife of Rajeshwar Reddy and defendants 5 to 7 and 9 are the children of Rajeshwar Reddy through the 8th defendant. However, defendants 1 and 2 had taken a stand that the 8th defendant is not the legally wedded wife of late Rajeshwar Reddy and she was only a kept mistress of late Rajeshwar Reddy and that defendants 5 to 7 and 9 are not the legitimate children of the said late Rajeshwar Reddy. The 8th defendant examined herself as D.W.7 and she had also examined D.W.9. Both of them had spoken about the ceremonies and also celebration of marriage in between 8th defendant and late Rajeshwar Reddy. D.W.7 had deposed that her marriage was celebrated according to the custom prevalent in the community and she had narrated all the details relating to the ceremonies which had been observed as per the customary practice. D.W.9, a resident of Palakurthi village in Karimnagar District, who is related to the 8th defendant had deposed about the marriage of the 8th defendant with late Rajeshwar Reddy and though all the aspects had been narrated in detail by this witness, in the cross-examination the credibility of this witness could not be shaken in any way. Thus, D.W.7 and D.W.9 had deposed relating to the celebration of marriage in between 8th defendant and late Rajeshwar Reddy. The evidence of D.W.10 and D.W.12 is to the effect that they have been seeing the 8th defendant in the house of late Rajeshwar

Reddy along with her children and she was being treated as wife of Rajeshwar Reddy and her children as his children only. D.W.10 is a Medical Officer and D.W.12 is an Ex-Member of Legislative Assembly and these are all independent witnesses. P.W.2 also had categorically stated that the 8th defendant is the second wife of Rajeshwar Reddy. The trial Court had discussed the oral evidence in detail and also had placed reliance on the documentary evidence -Ex.B-165, B-168, B-169(a), B-170(a), B-172(a), B-155, B-159, B-154, B-160 to B-164, B-174, and also several admissions made by the witnesses to arrive at the conclusion that even the marriage of Rajeshwar Reddy with the 8th defendant had been established. These are all findings of fact which had been recorded by the trial Court on appreciation of the oral and documentary evidence. On a overall appreciation of all the facts and circumstances and also the oral and documentary evidence, it is clear that all these wives - the 1st plaintiff and defendants 2 and 8, have been treated by the society as the wives of Rajeshwar Reddy only and there has been long cohabitation till the death of Rajeshwar Reddy between these parties. Taking into consideration the voluminous oral and documentary evidence, though certain parties admitted only one marriage disputing the other in the respective pleadings, I am of the opinion that the trial Court is well justified in recording findings relating to the factum of these marriages in view of the oral and documentary evidence.

23. This question cannot be left at that stage. It is one thing to say that there was marriage and it is another thing to say that there was valid marriage in accordance with law. It is not in dispute the Rajeshwar Reddy originally belonged to Karimnagar and came over to Adilabad and it is needless to say that all these parts fall within the Telangana Area. The counsel representing both the plaintiffs and also the 8th defendant with all vehemence had contended that prior to the Hindu Marriage Act coming into force, there was no legal bar even on the part of a Hindu to have more than one wife. In other words, polygamy was not prohibited even amongst Hindus in this area and monogamy was not enforced during those days and hence it cannot be said that these marriages are not valid marriages. In the decision referred (8) supra, it was held that in order that there may be a valid marriage according to Hindu Law certain religious rites are to be performed and invoking the fire and performing Saptapadi around the sacred fire have been considered by the Supreme Court to be two of the basic requirements for a traditional marriage and it is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship, which the law accepts. Even prior to the Hindu Marriage Act came into force, no doubt in certain provinces like Bombay and Madras, the Bombay Prevention of Hindu Bigamous Marriages Act, Act 25 of 1946, and the Madras Hindu Bigamy Prevention and Divorce Act, Act 6 of 1949, were brought in and as far as Telangana Area is concerned, prior to the police action it was in Hyderabad State, a Part B State, and during the period of the relevant marriages these enactment's referred to supra were inoperative in the respective provinces and

hence it cannot be said that any of the provisions of the said Acts would operate as against these parties. However, at the relevant point of time, Hyderabad Penal Code 1324 Fasli was in force in this area and Section 421 of the said Penal Code had dealt with bigamous marriage and this provision virtually is in pari materia with Section 494 of the Indian Penal Code. But however, the words used in the provision are ".....marriage being void....". In view of the same, it had been contended that it cannot be said that there was any legal bar so as to invalidate the other marriages of Rajeshwar Reddy which had been celebrated long prior to the merger of the State or the coming into force of the Hindu Marriage Act. In support of the contention that polygamy amongst Hindus was not prohibited till the statutory prohibition had been introduced by virtue of any provincial legislation or the Central legislation which came into force long after these marriages, strong reliance was placed on the decisions referred (2), (3), (4), (5), (6) and (7) supra.

24. I had gone through the decisions which had been relied upon and no doubt certain observations in this regard had been made in the aforesaid decisions. The learned Counsel also had placed strong reliance on certain of the passages in Mitra's Hindu Law. At page 532 while dealing with the extent of statutory changes made by Hindu Marriage Act, 1955 in the traditional Hindu Law of marriage, it was stated:

"Before enactment of Hindu Marriage Act, 1955, Hindu marriage was polygamous. The major amendments of the law relating to Hindu marriage introduced by the Hindu Marriage Act may be enumerated thus:

- (i) The Act has introduced the rule of monogamy [Section 5(i)].
- (ii) Bigamy has been declared to be a punishable offence (Section 17)".

Paras Diwan, in Hindu Law, while dealing with Monogamy, Polygamy and Polyandry had stated as follows:

"Before 1955, India was the largest country in the world which permitted its great majority. of people, Hindus and Muslims, to practice polygamy (unlimited to Hindus and limited to four wives to Muslims). The Christians, Parsis and Jews do not practice polygamy. They perform monogamous marriages. In some parts of India, such as in Lahaul valley in Himachal Pradesh and among the Thiyyas of South Malabar, Polyandry prevailed and was recognised under custom Krishnan and Others Vs. Ammalu and Others,). Strict monogamy was introduced for Hindus in Bombay Province in 1948 and in Madras Province in 1949. Finally in 1955 the Hindu Marriage Act introduced monogamy for all Hindus and made bigamy a penal offence. Bigamy among Hindus is now punishable with a term of imprisonment which may extend to seven years, and, if the fact of the first marriage was concealed from the spouse, the term of imprisonment may extend to 10 years."

In Hindu Law and Usage, by Mayne it was stated:

"From Vedic times, though monogamy has been the rule, polygamy has, as an exception, existed side by side. The rules relating to anuloma marriages allowed a man more than one wife....."

25. It is not in dispute in the present case that the marriages of Rajeshwar Reddy are along prior to the provisions of the Hindu Marriage Act, 1955 came into force. When these marriages are valid marriages in view of the absence of any legal bar or statutory prohibition operative against these parties during those times, in the light of the clear findings recorded by the trial Court upholding these marriages of Rajeshwar Reddy, I have no hesitation in coming to the conclusion that the findings recorded by the trial Court relating to the respective shares of the parties also are to be upheld and they cannot be disturbed. No doubt, a serious attempt was made by the learned Counsel for the appellants to convince the Court that there should be changed shares in view of the fact that the 2nd appellant alone can be said to be the legally wedded wife. In view of the factual and legal position, I am not inclined to accept with the said contention advanced by the learned Counsel for the appellants to the effect that there should be alteration of shares. No doubt Sri Ugle, the learned Counsel representing the Cross-Objectors had made a serious attempt to establish that the 2nd defendant i.e., the 2nd appellant, is not the legally wedded wife. In view of the voluminous oral and documentary evidence, I am not inclined to accept with the said contention also. Hence, viewed from any angle, I am of the considered opinion that the trial Court had taken pains in appreciating the oral and documentary evidence at length while recording findings in detail and hence I am not inclined to disturb any of the findings and consequently both the Appeal and the Cross-Objections fail.

26. Point No. 3: In view of the findings which had been recorded above, I do not see any merit in the Appeal and also the Cross-objections and accordingly both are dismissed. In view of the close relationship between the parties, I am not inclined to make any order as to costs and the parties do bear their own costs.

27. The Court records its appreciation for the able assistance rendered by the counsel on record Sri Ravi Kiran Rao, Sri Bakshi and Sri Ugle, in deciding the matters.