
(1966) 12 KL CK 0006
In the High Court Of Kerala
Case No : S.A. No's. 318 and 373 of 1962

Kali	Vs	APPELLANT
Kamalakshi Amma and another		RESPONDENT

Date of Decision : 02-12-1966

Acts Referred:

Hindu Marriage Act, 1955 — Section 29, 30
Penal Code, 1860 (IPC) — Section 494

Citation : (1967) KLJ 584

Hon'ble Judges : M.S. Menon, C.J;S. Velu Pillai, J

Bench : Division Bench

Advocate : G. Viswanatha Iyer, for the Appellant; P. Subramanian Potti, S.A. Nagendran, for the Respondent

Final Decision : Allowed

Judgement

Velu Pillai J.

1. O.S. 800 of 1957 from which S.A. 373 of 1962 arises, was by the first plaintiff Kamalakshi Amina, and the second plaintiff her daughter, to set aside a sale deed, Ex. D-1 of the year 1956, executed by Narayanan Madhavan in favor of Chempakakkutti, the first defendant - appellant. Their right to sue to set it aside, depended on whether the first plaintiff was the legally wedded wife of Narayanan Madhavan and whether in any event, she derived any interest in the suit property. The two courts below have found against her on the first contention, and in her favor on the second. Narayanan Madhavan was an Ezhava and the first plaintiff, now no more and represented by her legal representatives, was a Nair. A marriage between an Ezhava male and a Nair female was not permissible under the customary law of Travancore or any enactment of that State except the Travancore Special Marriage and Succession Act, 1119. That was an Act passed by His Highness the Maharaja of Travancore on the 29th August, 1943, in order to provide - in the words of the preamble to the Act-"a form of marriage for persons who cannot otherwise validly contract a marriage and whose

marriage would otherwise be invalid and to provide a law of intestate succession for them". It is common, ground, that there has been, no marriage under the provisions of that Act or the Special Marriage Act, 1954, which replaced it on the 1st January, 1955.

2. Ex.P-1 dated the 5th April,1956 a document styled as a "

" was the document relied upon for the plaintiffs, to establish a marriage between the first plaintiff and Narayanan Madhavan. The relevant portion of the document reads as follows:-

Ex. P-1 is at once an admission of cohabitation, and a negation of a marriage having taken place between the parties. A document like Ex. P-1, will not solemnize a marriage between the parties. "To marry" is to go through a form of marriage known to law and not merely to make an averment in a document like Ex. P-1.

3. In *Mt. Kalan v. Emperor A.I. R. 1938 Sind 127* the expression "marries" used in Section 494 of the Indian Penal Code came up for consideration. Davis, J.C. speaking on behalf of the bench, said:

We think it is necessary for the prosecution to prove that the form of marriage was a form recognized by or known to the law, otherwise it would be open to the prosecution by mere assertion to constitute any mutual act on the part of the man and woman a form of marriage. For instance, taking an absurd example and the error in a proposition is often most easily and clearly shown by an absurd example, if the complainant chose to come forward and say that the man and woman held hands while the man crowed like a cock, and the woman clucked like a hen, that was a "form of marriage," would the learned Judge have accepted that assertion as sufficient? Clearly when the word "marriage" is used in S. 494, I.P. C. it means marries by some form of marriage known to or recognized by the law. S. 494, when it uses the word "marries" does not of course refer to a valid marriage. A bigamous marriage cannot be a valid marriage, and apart from the bar of the first marriage, it may be that there may be some other legal impediment to the validity of the marriage of the man or woman, some legal impediment personal to the man or woman, such as consanguinity yet if the second marriage be a form recognized by or known to the law, that would, we think, be sufficient to satisfy this particular provision of the section.

To the same effect is a recent decision of the Supreme Court - *Kanwal Ram v. Himachal Pradesh Administration 1966 CrL. L.J. 472* wherein it has been laid down that in an adultery or bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved.

4. In the first plaintiff and Narayanan Madhavan had gone through some form of marriage known to and recognized by law as capable of producing a valid marriage, even though as a matter of fact the marriage was invalid, there would

have been no trouble in the way of the plaintiffs in view of the Hindu Marriage Act, 1955. Even though Section 30 of that Act repealed the Hindu Marriages Validity Act, 1949, specific provision was made in respect of intercaste marriages in sub-section (1) of Section 29 of that Act. That sub-section reads as follows:-

A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

As no marriage was ever solemnized between the parties through any form of marriage known to and recognized by law as capable of producing a valid marriage, we must hold that there was no marriage between the plaintiff and Narayanan Madhavan, in spite of the long and intimate relations that apparently obtained between them,

5. The latter part of the clause extracted above from Ex. P-1, imports neither a disposition of his property by Narayanan Madhavan in present as held by the Munsiff nor a testamentary disposition as held by the learned Judge. Indeed, there is no dispositive word at all in Ex. P-1, but only a declaration of mutual rights to property that should flow from a legal and valid marriage. When the marriage is neither legal nor valid, that part of the clause in Ex, P-1 does not ever come into play.

6. As a result, it follows, that the plaintiffs are not competent to impeach Ex.D-1.

7. O.S. 58 of 1958 from which S.A. 318 of 1962 arises was instituted by the appellant, the vendee under Ex. D-1, to evict Kamalakshi Amma and her daughter, the respondents in the second appeal, from the building in the suit property. The suit failed before the two courts below, on the ground that Ex. D-1 was invalid. Now that that ground cannot be maintained, the prayer for recovery of possession of the building has to be allowed. The issue as to mesne profits in respect of the building was left undetermined by the courts below, and in this court learned counsel appearing for the appellant gave up all claims for arrears of rent and mesne profits, past and future. The result is, that S.A. 373 of 1962 is allowed and O.S. 800 of 1957 is dismissed. S.A. 318 of 1962 also is allowed and O.S. 58 of 1958 is decreed, by declaring the appellant's title to the property in that suit, viz., the building, and allowing her to recover the same from the respondents; her prayer to realize arrears of rent and mesne profits is dismissed. In the circumstances of the case we direct both parties to bear their costs throughout.