

(1983) 11 KL CK 0023
In the High Court Of Kerala
Case No : S.A. No. 4 of 1979

Karuvathodi Janaki Amma and Others	Vs	APPELLANT
Lakshmi and Others		RESPONDENT

Date of Decision : 21-11-1983

Acts Referred:

Citation : (1984) KLJ 506

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : P.N.K. Achan and K. Vijayan, for the Appellant; T.R.G. Warriar and Sebastian Davis, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—This second appeal demonstrates how sometimes, for a little bit of property, all principles of morality could be thrown to the winds, and truth could be callously made a casualty in a legal fight. The question arising in the second appeal is whether there was a valid marriage, way back about the year 1916 between the 1st plaintiff Kunhikrishna Panicker and Lakshmikutty Amma of Panampatta Ayyappankalathil, sister of the 1st defendant. While the plaintiff would contend that he had married Lakshmikutty Amma and had lived with her ever thereafter, till death did part them on 19-3-1944 M.E. (corresponding to 1-11-1968), the 1st defendant imposed upon the plaintiff another lady by name Mani Amma of Kunnathodiyil as his wife. The written statement is silent as to whether Lakshmikutty Amma was married, and if so, who her husband had been.

2. It is not disputed that if the marriage as urged by the plaintiffs" is valid, the 1st plaintiff would be the sole heir of Lakshmikutty Amma. In that event the plaintiff could rightly succeed to the property allotted to Lakshmi-kutty Amma in the partition of the tarwad, entered into between Lakshmikutty Araraa and the 1st defendant. The courts below have concurred to hold that the plaintiffs" case has been established to the hilt by abundance of documentary and oral evidence.

On the basis of the evidence in the case, it is inconceivable that another view could be taken. Ext. A9 is the registered will executed as back as on 1-8-1934 by the 1st plaintiff and another person wherein Lakshmikutty Amma is described as the wife of the 1st plaintiff. It contains the names of the legatees who were directed to pay a sum to Lakshmikutty Amma within six months of the death of the 1st plaintiff. There are three more wills executed by the 1st plaintiff, Ext. A2 dated 20-10-1950, Ext. A1 dated 8-11-1962 and Ext. A3 dated 3-12-1965, wherein the 1st plaintiff figures as a testator and Lakshmikutty Amma is described as the wife of the 1st plaintiff. Provisions are made therein for payment to Lakshmikutty Amma. A diabolic suggestion that the description of Lakshmikutty Amma as his wife and the provisions for payment to her were self-serving statements, had been rightly discarded by the courts below. It is unimaginable that a person would execute documents many years (in one case nearly 35 years) before the controversy arose and that too in a manner which would affect his interests in the event of his death. Ext. A5 is a voters' list wherein names of Lakshmikutty Amma and of the 1st defendant appear. Lakshmikutty Amma Kunhikrishna Panicker is serial No. 76, the name Kunhikrishna Panicker being given within brackets. Similarly, as against the name of the 1st defendant the name of her husband Narayanan Nair is given. The 1st defendant admitted in her evidence that the name Narayanan Nair contained within brackets against her name in the voters' list is that of her husband. She had, however, to pretend ignorance about the name of Kunhikrishna Panicker. In such a desperate situation, the first defendant had uttered another lie to the effect that one Krishnan Nair was the husband of Lakshmikutty Amma. Yet another telltale item of evidence was a group photo taken, Ext. A4. Though the negative of the photograph was not produced, secondary evidence was given about the same, both by the 1st plaintiff as P.W. 1 and by his nephew as P.W. 2. The evidence of P.W. 2 that he had been employed in Mangalore, is not disputed. P.W. 1 has given evidence of his having gone to Mangalore for training in Ayurveda when he had taken his wife Lakshmikutty Amma with him. The certificate Ext. A7 would corroborate his evidence on that aspect. P.W.2 was admittedly employed in Mangalore. He has given evidence of his uncle, the plaintiff herein, and Lakshmikutty Amma, the wife of the plaintiff, residing with them at Mangalore and that during that stay, a photograph of the plaintiff and his wife and other members of the family of P.W. 2 was taken. That evidence found acceptance by both the courts. The photograph is one which would very much stare at the face of the 1st defendant recklessly making false allegations about her sister Lakshmikutty Amma and about her marriage. One such wild allegation of the 1st defendant in her evidence was that the 1st plaintiff was married to one Nani Amma of Kunnathodiyil. It was, however, demonstrated that the 1st defendant could not face a pointed cross-examination on that aspect. A specific suggestion was made to her that Nani Amma referred to by her as the wife of the 1st plaintiff was really married to Poonthottathil Kunjukrishnan Nair, that that couple had three children Thankam, Kunhilaksmi and Raju, and that Kunhukrishnan Nair died about three years prior to her examination; she could

not deny. She had, in the face of severe examination, to confess that her allegation of Lakshmikutty Amma having been married to one Kunhukrishnan Nair was based on hearsay. The evidence of D.Ws. 1 and 2 were rightly rejected as totally unreliable by both the courts below. P.W. 1, when he was examined, was aged about 82. He had given clear evidence about his marriage with Lakshmikutty Amma when he was aged 28. The evidence is perfectly convincing and it appealed to be so to the courts below. I have no hesitation in upholding the appraisal of his evidence by the courts below and their holding that the 1st plaintiff's evidence is absolutely true. As already noted above, his evidence has been fully corroborated by contemporary documentary evidence.

3. There was a criticism that minute details relating to the marriage had not been given by P.W. 1 in his examination. The lower appellate court rightly pointed out that the evidence of P.W. 1 that he had married Lakshmikutty Amma was not challenged in cross-examination. A similar approach was made by a Division Bench of this court in *Sreekumar v. Prema*, ILR 1976(1) Kerala 644 where the husband had given evidence that the marriage had been performed in accordance with the custom of the community. That testimony was not challenged in cross-examination. The Division Bench observed:

We think the requirement of the law would be satisfied by a statement of the type made by P.W. 1 that the marriage was performed in accordance with the marumakkathayam custom; especially when, as in this case, the said statement has not been effectively challenged. The customary rites of a marumakkathayam marriage are simple and well-known.

Unlike in the case before the Division Bench, as noted earlier, there is abundance of documentary evidence which would corroborate the version of the 1st plaintiff as P.W. 1 about the marriage with Lakshmikutty Amma. In *Sreekumar v. Prema*, ILR 1976 (1) Kerala 644, there is an exhaustive survey regarding the institution of "marriage" in the community to which the 1st plaintiff and Lakshmikutty Amma belonged. In the light of the discussion contained therein, there could not be any doubt whatever that there was a valid marriage between the 1st plaintiff and Lakshmikutty Amma.

4. It was contended that the law relating to marriage in the Malabar area at the relevant time was one contained in the Malabar Marriage Act, 1896 and that there under registration of a marriage was compulsory, and that there not having been any evidence that the marriage between the 1st plaintiff and Lakshmikutty Amma had been so registered, the 1st plaintiff could not claim the status of a legally married husband of Lakshmikutty Amma. This contention is totally unsustainable. The omission to register a marriage does not in any way affect the efficacy of a marriage duly and properly performed. A noted author on "Marumakkathayam Law" in his book published in the year 1926 refers to Malabar Marriage Act as follows:

Malabar Marriage Act. Madras Act IV of 1896 is as already stated the result of the

recommendation of the Commission. The act has sanctioned as a tentative measure, a system of registration with a formal declaration by both parties before the Registrar, preceded by a preliminary notice together with a statutory restriction as to caste ceremonial and relationship, and divorce by judicial process. The experience of 20 years have shown that the Act was not popular among the Nairs of Malabar and that the number of registrations under the Act has been falling from year to year.

(See "The Principles of Marumakkathayam Law" by M.P. Joseph, 1926 Edition, page 35). It would be noted from the above extract that the provision regarding registration of marriage had not been taken seriously by the members of the community in that area.

5. A contention, that a marriage otherwise duly performed would become invalid for non-compliance with a provision regarding registration had not found favour with the courts or with the academic writers. The same author, M.P. Joseph, mentions, at page 598 of his book, in relation to an analogous provision in the Travancore area, namely, the Travancore Nair Regulation, 1100:-

This section makes it incumbent on the husband or his guardian to give notice of marriage performed after the commencement of this Regulation... The notice has to be sent to the Parvathicar of the Pakuthy in which the marriage takes place, by registered Anchal or Post... The notice shall be posted or delivered within seven days of the date of marriage... The failure to give notice is penalized with a levy of a fine which may extend to one hundred rupees. But the failure to give does not make the marriage void, nor does it affect the legal rights of the parties to or the offspring of such marriage.

6. The intention behind the enacting of the provision relating to registration of the marriage, appears to be only to have a readily available and dependable piece of evidence regarding marriage. It was not intended that an omission to conform to this procedural requirement should result in an invalidation of a marriage otherwise duly performed. The speech made by the Member in charge of the Bill, in the Travancore Legislative Assembly, at the time when the corresponding provision was being discussed in that State, in connection with what ultimately emerged as the Travancore Nair Regulation 1100, is instructive in this context:

...Under the above circumstances, I think, in order to prevent false claims and false prosecutions Some kind of evidence of marriage is absolutely necessary. The House will notice that we are making failure to give notice of marriage penal under this Section. We do not invalidate marriage for that reason or make it so as to apply to the existing marriages. If notice of marriage is given, it will be very good evidence for the marriage. Under those circumstances, some such record is necessary to show that marriage has been contracted between parties...

(emphasis supplied)

7. To hold that the marriage will be invalid for the mere omission to register the same would lead to disastrous results in the community. Such results have to be avoided, unless the language of the Section is so inflexible. Having regard to the circumstances indicated above, I have no hesitation to reject the contention urged on behalf of the appellant.

8. The argument is fallacious from another point of view also. The Malabar Marriage Act was replaced by the Madras Marumakkathayam Act, 1933. u/s 4 of that enactment, the union between the 1st plaintiff and Lakshmikutty Amma would be a valid marriage; for thereunder, the conjugal union of a marumakkathayi female with a male belonging to the same community as such female, shall be deemed for all purposes to be a legal marriage, if the parties are not within the, prohibited degrees or relationship and if the union was openly solemnised in accordance with the customary ceremonies before the date on which the Act came into force. The conjugal union of the 1st plaintiff and Lakshmikutty Amma would satisfy all the requirements of Section 4(1) of the Act. In the light of the above discussion, the contentions raised in Question Nos. 1 and 2 in the second appeal have to be repelled. Nor is there any substance in the contention that the wills Exts. A1 to A3 are not admissible in evidence; as the courts below have pointed out, the wills have been referred to not for the purpose of determining any claims thereunder, but only in connection with the evidence relating to the status of Lakshmikutty Amma vis-a-vis the 1st plaintiff. That apart, even otherwise there is sufficient and acceptable evidence to establish the marriage between the 1st plaintiff and Lakshmikutty Amma. The second appeal is totally devoid of any substance. It has to be, and is hereby, dismissed. The plaintiffs will have their costs throughout from the defendants in the case.