

(1999) 11 MAD CK 0084

In the Madras High Court

Case No : Second Appeal No. 1664 of 1999 and C.M.P. No. 17825 of 1999

Kennedy Sigamani and Others

APPELLANT

Vs

Kiruba Gnanaseeli Prema and Another

RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Christian Marriage Act, 1872 — Section 4
Civil Procedure Code, 1908 (CPC) — Section 100, 9
Evidence Act, 1872 — Section 114

Citation : AIR 2000 Mad 337 : (2000) 1 LW 878

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Kamala, for the Appellant; A.U. Ilango, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Defendants in O.S. 364 of 1991 on the file of District Munsif, Srivalkuntam are the appellants herein.

2. Plaintiffs filed a suit for declaration that first plaintiff is the legally wedded wife of first defendant and second plaintiff is the child born to first defendant in that relationship.

3. Necessary facts for the purpose of second appeal could be summarised thus :

First plaintiff was studying in 10th Standard and wrote her examination in March. 1989 and failed in Science subject. First defendant who was residing just opposite to her residence had a sister by name Nightingale Mary. First plaintiff took tuition from her so that she can complete her S.S.L.C. examination. Her visit to first defendant's house for the purpose of tuition ended in love affair between them. First defendant was a Post graduate and it is her case that first defendant holding Holy Bible in his hands declared that first plaintiff is his wife and on that belief they had physical contact, the consequence of which second plaintiff was bom. When she was pregnant, this fact was Informed to first

defendant who asked her to tie a cloth around her stomach so that she being a school going child, her pregnancy will not be known to outsiders. She could not do the same for long since she felt pain and headache and suffocation. She even attempted to commit suicide and when such an attempt was made, her grandmother who was residing with her enquired the reason which compelled her to disclose what all happened. The matter was informed to her parents and later she was taken to her uncle's house at Kalaiyarkoil where she gave birth to second plaintiff. Relatives and friends made various attempts to have settlement and they wanted first plaintiff and child to live with first defendant. Various attempts were made and the matter was also taken to first defendant's father who was a Parish Priest for an amicable settlement. But the matter did not yield any result in spite of the fact that Church authorities also intervened.

The suit was therefore filed for the relief stated above.

4. In the written statement filed by first defendant, he pleaded Ignorance and even said that he does not know anything about first plaintiff. He also took a contention that first plaintiff is a girl of bad character. He also contended that a man cannot be declared to be the husband of a lady simply because it is alleged that he had sexual intercourse with that lady. He also said that first defendant is a post graduate having M. Com. degree and he is from responsible family in the area and the suit is filed by one sect of Christian community who are not having good terms with of her sect of Christians in that area. He prayed for dismissal of the suit.

5. Trial Court on the above pleadings took oral and documentary evidence. Exs. A1 to A 13 were marked on the side of plaintiff and oral evidence consist of PWs 1 and 4. On the side of appellant, DWs 1 and 2 were examined of whom DW1 is first defendant. Documentary evidence consist of Exs. B1 to B3.

6. Trial Court after evaluating entire evidence held that first plaintiff believed the representation of first defendant and in fact first defendant holding the Holy Bible in his hands declared that first plaintiff is his wife and first plaintiff believed that was marriage. Trial Court also held that on the basis of that representation, first plaintiff yielded for physical contact and second plaintiff was born in that connection. Entire case put forward by defendant was found to be false. It decreed the suit as prayed for.

7. The matter was taken in appeal by appellants in A.S. 195 of 1995 on the file of Principal District Court. Tuticorin. Lower appellate Court also held that first defendant really cheated first plaintiff and a school going girl was misled by the representation by first defendant. Lower appellate Court also held that what PW 1 stated about the factum of marriage is true and she believed that will be sufficient for performance of a marriage. Each and every case put forward by first defendant was found to be false.

8. It is against the concurrent Judgments of Courts below, appellants have preferred this second appeal on the following substantial questions of law :

(a) When the plaintiffs have neither pleaded nor gave evidence regarding the day, time and place of the alleged marriage, is not the judgment vitiated in accepting the case of the plaintiff?

(b) Whether a mere taking a solemn oath on the Holy Bible by both man and the woman professing Christianity will amount to a valid marriage, in between Christians ?

(c) is a marriage between two Christians not solemnised or performed under any of the provisions of the Act is void u/s 4 of the Christian Marriage Act 15 of 1872?

(d) is the Civil Court competent has competent power of jurisdiction to declare a void marriage u/s 4 of the Christian Marriage Act, as a valid marriage ?

(e) Whether, a subordinate Judge has got jurisdiction to entertain a suit for declaration in respect of a validity or otherwise of the marriage in between a male and female both professing Christianity ?

9. Since caveat was entered by respondents. I heard the second appeal at the admission stage itself.

10. Question Nos. (d) and (e) could be considered together. Learned counsel for appellants contended that Subordinate Judge has no jurisdiction to decide any question about the Christian Marriage and the District Judge alone has competent Jurisdiction. I do not find any merit in the said submission. Respondents have filed suit not for any of the reliefs mentioned in the Indian Divorce Act. If a relief is sought for in the Indian Divorce Act. naturally, jurisdiction is only with District Court. In this case, plaintiffs wanted only declaration of statute that could be granted by a competent Civil Court. These questions are answered against appellants.

11. Other three questions could be considered together. Learned counsel for appellants submitted that parties are Christians and they are governed by Indian Christians Marriage Act. It is argued that u/s 4 of the Act, a marriage could be solemnized only if certain conditions are satisfied and even on plaint allegations, it is clear that plaintiffs have not satisfied those conditions. Courts below were therefore not correct in declaring the status of first plaintiff as wife and second plaintiff as his child.

12. It is true that under Indian Christian Marriage Act. certain formalities are to be satisfied for marriage among Christians. It is also true that plaint does not disclose that those formalities are satisfied. First plaintiff only says that first defendant took Bible and placing it on his hands declared that she is his wife. First defendant is none other than son of a Parish Priest. First plaintiff believed the statement of first defendant holding the Bible on his hands and declaring her as wife is sufficient for a valid marriage. It is only after she became pregnant and the matter was known to other members of family, they wanted a marriage solemnized in accordance with the Act. Neither first defendant nor second defendant agreed for the same and compromise also failed .

13. Both the Courts have held that first defendant did make such representation and believed the evidence of PW 1. The fact that first plaintiff was only 17 or 18 years old during the relevant time and was a school going child is also a matter not in dispute. The girl wanted to have tuition from none other than first defendant's sister. It was thereafter contact between them began. First plaintiff may not be in a position to know the formalities of marriage and first defendant being a post graduate and son of a Parish Priest, there is nothing to disbelieve the case of PW 1 when she said that the statement by DW 1 holding the Bible that she is his wife amounts to marriage. May be u/s 4 of the Christians Marriage Act, the condition may not have been satisfied. But the question is whether a ground is made out for interference u/s 100 of Code of Civil Procedure. Merely because there is question of law or substantial question of law, that does not follow that there should be interference in the decision of lower Court, when that interference amounts to miscarriage of Justice and concealment of truth.

14. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , in para 5, their Lordships have held thus (at page 855 of AIR) :

"..... The Courts of law are meant for Imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of Court is being abused. Property-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely, we have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

In that case, their Lordships were dealing with the case of fraud on Court. According to me, the same principle applies to the facts of this case,

15. When the entire case of first defendant is found to be false and it has also come out in evidence that on false representation he made first plaintiff to yield to his desire, such a person will not be entitled to any relief merely because there is question of law in the second appeal. It is declared that there is no marriage, the result would be second plaintiff will have to be declared as bastard and the status of the first plaintiff among the community also will be seriously affected. After having enjoyed first plaintiff and satisfying his sexual desire first defendant went to the extent of saying that first plaintiff is of immoral character and at the same time he has stated in the written statement that he does not know anything about first plaintiff.

16. Both the Courts have held that first plaintiffs allegation that holding Bible first defendant declared her as his wife is true and only after that statement of first defendant, they had physical contact. Once that allegation of PW 1 is believed, it is clear that she believed that representation amounts to marriage.

17. By this finding it should not be understood that principle of estoppel applies even against question of law or against the provisions of statute. 1 only hold that

I am not interfering in this second appeal since interference will amount to miscarriage of justice and plaintiff will be put to untold misery and hardship. If the result of the judgment will put one of the parties to hardship and misery, Court will not interfere morally because there is question of law in that case. Courts below have done substantial justice.

18. In the result, the second appeal is dismissed. No costs. Consequently, C.M.P. No. 17825 of 1999 is also dismissed.