
(1970) 11 KL CK 0008
In the High Court Of Kerala
Case No : S.A. No. 768 of 1967

Kunji Pillai Amma and another	Vs	APPELLANT
Somanathan Pillai and three others		RESPONDENT

Date of Decision : 19-11-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 8

Citation : (1971) KLJ 105

Hon'ble Judges : P. Unnikrishna Kurup, J

Bench : Single Bench

Advocate : S. Narayanan Poti, N.K. Varkey and N. Dharmadan, for the Appellant; K. Velayudhan Nair, V.S. Moothath, N.R.K. Nair and K.J. Joseph, for the Respondent

Final Decision : Allowed

Judgement

P. Unnikrishna Kurup, J.—The plaintiff's in a suit for partition are the appellants in this second appeal. The 1st plaintiff is the widow and the 2nd plaintiff, the son of one deceased Kuttan Pillai. The plaint schedule properties jointly belonged to Kuttan Pillai and his mother the 2nd defendant. On the death of Kuttan Pillai, the properties devolved on the plaintiffs, 2nd defendant and the 4th defendant, daughter of Kuttan Pillai by another wife. The 2nd defendant is stated to have executed a settlement deed Ex. P-1 in favour of the 1st defendant and the plaintiffs' prayer was to set aside this settlement deed and for partition of the properties. The 1st defendant, who alone contested the suit, put forward the plea that deceased Kuttan Pillai had not married the 1st plaintiff and that the 2nd plaintiff was not the son of deceased Kuttan Pillai.

2. Both the Courts below found that there has been no legal marriage between deceased Kuttan Pillai and the 1st plaintiff as there was no evidence to show that Kuttan Pillai had presented cloth to the 1st plaintiff at the time of the marriage and that was one of the essential conditions required for a valid marriage under the Nair Act, The lower appellate Court, in view of its finding that the 1st plaintiff

was not the legally wedded Wife and the 2nd plaintiff the son of deceased Kuttan Pillai, did not go into the question whether the plaint items belonged to the 2nd defendant and deceased Kuttan Pillai as their sub tarwad property or whether it belonged to them as tenants-in-common.

3. The appellants' learned counsel has argued that there was ample evidence in this case to show that deceased Kuttan Pillai had married the 1st plaintiff and that they had lived as husband and wife for a long time, that there was also evidence to show that the 2nd plaintiff was born to the 1st plaintiff during the subsistence of the marriage and that the accidental omission to mention in the evidence by the plaintiffs' witness that cloth had been presented at the time of the marriage was totally insufficient to hold that there was no valid marriage.

4. To understand the nature of the contention, the relevant provision of the Nair Act has to be seen. Section 3 of the Nair Act (Regulation II of 1100) runs as follows:

The conjugal union of a Nayar female, subject to the restrictions of consanguinity and affinity, with--

(i) a Nayar male, or

(ii) any male other than a Nayar with whom conjugal union is permitted according to recognised social custom and usage,

Openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which Regulation I of 1088 came into force and subsisting on such date or so solemnised subsequent to that date, shall be deemed to be a valid marriage for all legal purposes:

x x x

It will be noticed from the above provision that a marriage under the Nair Act is to be openly solemnised by the presentation of cloth to the female by the male. Both the courts below have observed that there was no evidence in the case to show that cloth had been presented at the time of the marriage to the female by the male and therefore one of the formalities prescribed by the Nair Act for the solemnisation of the marriage has not been complied with and the marriage was therefore not legal. I may, at this stage, go into the evidence adduced on the side of the plaintiffs in this case. The 1st plaintiff examined as P.W. 1 has stated that her marriage with deceased Kuttan Pillai took place in 1114 under the auspices of the Nair Karayogam of the locality. She further stated that the bridegroom had tied a gold necklace round her neck and that a flower garland was also put round her neck by him. There was also a purohit who officiated at the marriage. No specific question was put to her as to whether cloth had been presented by the bridegroom to her and she did not mention about the presentation of cloth. P.W. 2 the 2nd defendant, mother of deceased Kuttan Pillai, has stated in clear terms that her son Kuttan Pillai had married the 1st plaintiff although she did not attend the marriage of her son. P.W. 3 has also sworn to the

effect that the marriage took place and that the 2nd plaintiff was the son born in that wed-lock. Over and above the oral evidence, Ex. P-2 a copy of the marriage register maintained in the Taluk Office has been produced. The trial court did not rely on this document on the ground that according to the 1st plaintiff the marriage had taken place on 24-11-1114 whereas in the marriage certificate Ex. P-2 it is seen to have been solemnised on 25-11-1114. The learned counsel for the appellants has argued that this insignificant difference was due to some slight mistake and should not have been relied on for the purpose of casting doubts on the authenticity of the certificate. Exs. P-5 and P-6 are letters sent by Kuttan Pillai to the 1st plaintiff from Malaya and these letters unmistakably show that Kuttan Pillai treated the 1st plaintiff as his wife and the 2nd plaintiff as his son. These letters have been proved by the 1st plaintiff. They are inland letters sent from Malaya and bear the stamp and the date seal of Malaya and therefore their authenticity cannot be questioned. Ex. P-3 the heirship certificate issued from the Taluk Office is also of some evidentiary value in this matter. Thus, the evidence is clear that deceased Kuttan Pillai and the 1st plaintiff had been married and has lived as husband and wife. The question that survives is whether because there is no specific proof that deceased Kuttan Pillai had presented cloth at the time of the marriage, the marriage has to be held as invalid and as of no effect. In the plaint there was a specific averment that a marriage had taken place between Kuttan Pillai and the 1st plaintiff. In the written statement filed by the 1st defendant (the only contesting defendant), there was a bald assertion that deceased Kuttan Pillai had not married the first plaintiff and that the 2nd plaintiff was not his son. There was no averment that the formalities required under the Nair Act have not been complied with and the marriage was therefore invalid. Order VI Rule 8 of the CPC provides:

Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

It has therefore to be taken that the bare denial of the marriage does not amount to a denial of the legality or sufficiency in law of such marriage. It is well-settled that there is a presumption in favour of the validity of a marriage and although the presumption may be rebutted, the Courts are ordinarily slow in denying the legitimacy of a child born during the subsistence of the marriage. Mulla's Hindu law. Thirteenth Edition, at page 473, contains the following observations:

Where it is proved that a marriage was performed in fact, the Court will presume that it is valid in law, and that the necessary ceremonies have been performed.

The learned Author further observes:

There is an extremely strong presumption in favour of the validity of a marriage and the legitimacy of its offspring if from the time of the alleged marriage the

parties are recognised by all persons concerned as man and wife and are so described in important documents and on important occasions. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied.

5. A careful consideration of the evidence in this case leaves no room for doubt that a marriage had taken place between Kuttan Pillai and the 1st plaintiff. Kuttan Pillai's own admission in the letters written by him from Malaya and the evidence of his mother, the 2nd defendant, considerably strengthen the case of the plaintiff regarding the marriage.

6. The only circumstance which is relied on by the respondents to show that the marriage is not legal is the absence of evidence on the side of the plaintiffs to show that presentation of cloth by the bridegroom to the bride as required by the provisions of the Nair Act had taken place. The Supreme Court had occasion to deal with such a case in *Veerappa v. Michael* AIR 1963 S.C. 923. In that case, there was proof to show that the marriage had taken place in the Brahma form, but there was no evidence indicating that "kanyadhan", which is a necessary ingredient of Brahma marriage had taken place. The High Court relying upon the oral evidence of a witness held that "kanyadhan" had not been observed in the marriage and the marriage was therefore invalid. The Supreme Court reversed the decision of the High Court and made the following observations:

The Guru only narrates some of the ceremonies held in marriages in the community but he does not expressly state that the ceremony of "Kanyadhan" was not observed at Bangaru Animal's marriage. In this stage of evidence the presumption in Hindu Law that the marriage was performed in Brahma form must be invoked. As we have pointed out under the Hindu Law whether a marriage was in Brahma form or Asura form, the Court will presume even where the parties are Shudras that it was in the Brahma form. Further where it is proved that the marriage was performed in fact the Court will also presume that the necessary ceremonies have been performed. See--*Mouji Lal v. Chandrabati* 38 Indian Appeals 122 (PC).

7. The facts in this case, as already stated, establish that a marriage under the Nair Act had taken place. The 1st plaintiff no doubt did not specifically state that the husband had presented to her cloth, which according to the Nair Act is an essential ingredient of the marriage ceremony. But as observed by the Supreme Court when the marriage has been proved, a presumption that the necessary ceremonies have been performed will arise. P.W. 1 did not say that there was presentation of cloth and this could have been only because she did not consider this an important party of the ceremony. It does not rule out presentation of cloth by the husband to the wife.

8. In *Eversley's Law of Domestic Relations*, it is stated that:

the marriage state being the chief foundation on which the superstructure of society rests, it follows naturally that the law, which is the expression of the

sentiments prevailing among organised communities, assumes a favourable attitude towards it. The presumption of the law is clearly in its favour--semper praesumitur pro matrimonio in civil matters, or on an application for maintenance, which are dealt with on a very different basis from that applicable to a prosecution for bigamy, where strict proof of marriage is required. This presumption of law is much stronger than most legal presumptions; it is not lightly to be repelled by a mere balance of probability, but the evidence repelling it must be strong, distinct and satisfactoryEvery intendment shall be made in favour of a marriage, de facts; and where an act appears to have been done by proper persons, the law will intend that everything was done in a proper manner--omnio proesumubtur rite esse acta, even though it may be necessary to presume the grant of a special licence. This legal presumption requires strong and satisfactory evidence to displace it; and mere absence of proof of the regularity of the marriage rites and ceremonies will not displace it.....(see pages 4 and 5)

The law appears to be clear that when the factum of marriage has been proved, the conditions required for a valid marriage would be presumed to have been fulfilled. The long course of conduct, the fact that the husband had openly acknowledged the 1st plaintiff as his wife and the 2nd plaintiff as his son, the marriage certificate and the various other circumstances already discussed above afford ample proof that there was a valid subsisting marriage between deceased Kuttan Pillai and the 1st plaintiff. The lower courts were in error in holding that the marriage is not valid merely relying on the circumstance that no one has spoken to the presentation of cloth by the husband to the wife. The decisions of the lower Courts on this point are reversed.

9. The lower appellate Court left open the question whether the plaint items belonged to the 2nd defendant and deceased Kuttan Pillai as their Sub Tarwad property or whether it belonged to them as tenants-in-common, since it had found that the plaintiffs are not the legal heirs of Kuttan Pillai. It has therefore now become necessary to remand the suit to the lower appellate Court for consideration of the question regarding the ownership of the plaint items. The 1st respondent has filed a memo of cross-objections, his grievance being that the lower appellate Court was not justified in leaving open the question whether the properties acquired are Sub Tarwad properties or not. Now that the case is being remanded to the lower appellate Court for deciding the said question, nothing further requires to be investigated regarding the cross-objections.

In the result, the appeal is allowed in the light of the observations made above and the decisions of the Court below are set aside. The memo of cross-objections is dismissed. The suit is remanded to the lower appellate Court for Fresh disposal according to law. The costs in this appeal will abide the result of the suit.