

(2000) 02 MAD CK 0036
In the Madras High Court
Case No : S.A. No. 1471 of 1987

M. Jainoon

APPELLANT

Vs

M. Ammanulla Khan and 3 others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 2000 Mad 381 : (2000) 2 CTC 645 : (2000) 3 LW 837 : (2000) 2 MLJ 714

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : Mr. K. Yamunan, for the Appellant; Mr. S. Desikan for Mr. N. Kannadasan, for the Respondent

Judgement

1. This second appeal is directed against the judgment of the learned District Judge, Madurai in A.S.No.231 of 1984 in reversing the judgment of

the learned District Munsif, Ramanathapuram, in O.S.No.311 of 1980. The defendant in the suit is the appellant in the above second appeal.

2. The plaintiffs filed the suit for recovery of a sum of Rs 5,000 towards damages arising out of alleged defamation, mental agony and medical

expenses. According to them they belong to Muslim Community and are members of the Periapatnam Jamath. Jalai Jamal Pallivasal in Periapatnam

is under the administration of Jamath. It is under the administration and management of the Jamath. Members of Jamath would elect a committee

and the present committee consisting of 11 members was functioning from 3.8.1978. Though the committee was unregistered from time

immemorial, the committee was administering the Pallivasal and its properties. The first defendant is the Secretary of the Committee. The first

plaintiff is a very well to do person at Periapatnam and plaintiffs 2 to 5 are his sons. All of them are well educated and held in high esteem and respect among all the villages of Periapatnam and other surrounding areas. The first plaintiff had arranged for the marriage of his daughter and the marriage ceremony was also fixed to be celebrated on 21.8.1980 at about 9.30 a.m. to 12.00 noon. Invitations were also distributed to all friends and relatives. The usual customary practice in the village was that the marriage register maintained by Jamath Committee would be brought to the residence or the place where the marriage is being celebrated. The Marriage Register as well as other records of the pallivasal are always in the custody of Secretary, the defendant. For the said purpose of registering the marriages, charges will be paid and the Secretary was bound to send the register at the time of marriage for due registration. The requisite charges were paid by the first plaintiff for the marriage of his daughter on 15.8.1980 itself and receipt No.191 had also been issued by the defendant as Secretary. The plaintiffs had requested one Abdul Kafoor Alam Sha who was the President of Ramnad District Jamath and a very respectful person of the Committee and who was invited by all the Muslims in the area for presiding over most of the marriages, to conduct his daughter's marriage. But the defendant had suggested that the plaintiffs should invite one Samsudin Lebbai. brother of Abdul Kafoor Alam Sha. The plaintiffs did not agree for the said suggestion. The bridegroom's family had also insisted that only Abdul Kafoor Alam Sha should be invited and later the defendant also agreed to bring the Marriage Register. But contrary to the understanding on 21.8.1980 when all the parties were waiting for the ceremony, the first defendant did not bring the Marriage Register. Even though many person's were sent out to meet the defendant, he was not to be found and he had absconded and was not at all available in the village. The Marriage Register was also not available even after waiting and search. This resulted in the plaintiffs not being able to perform the marriage within the "Muhurtham" time and as a result of the non availability of the register signatures had to be obtained in lose papers. The entire episode resulted in mental shock and agony to the first plaintiff and all the members of the family. Their reputation and the respect which they have commanded were irreparably damaged and they were defamed in the minds of all the friends, relatives and villagers who had gathered for the

ceremony. The first plaintiff was very much affected both mentally and physically by the shock and disgrace experienced by him. He was already a

heart patient and he was affected and hence was required to undergo immediate medical treatment. With the result a lawyer's notice dated

1.9.1980 was sent to the defendant and a reply dated 22.9.1980 was sent on behalf of the defendant contending false and frivolous facts. He had

falsely described that he was not in charge of the marriage register. He has also falsely stated that it was the President who was in charge of the

Marriage Register and that there was also no practice or incident to take the marriage register to the individual houses. Hence the present suit

claiming a sum of Rs.4,000 as damages and a sum of Rs.1,000 towards medical expenses.

3. The defendant in his written statement while denying plaintiff allegations, contended that the plaintiff has suppressed many vital details regarding the

administration of Pallivasal including the election of S.K.Ali Thambi as the President of Jamath and that the entire administration was only under the

control of the President. There was no register for registering ""Nithchayathartham"". The register was available only for registering the marriages and

it was not correct to say that the register was in the custody and control of the Secretary. There was no practice of taking the register to all the

houses and the register will be taken only to register marriages which were conducted in accordance with the regulations and conditions imposed

by Jamath- administration. There was no duty cast upon the Secretary to take the register to the individual houses and to register the marriages.

Any such registration would be effected only on the directions of the President. No receipt had been issued for the marriage of the plaintiff's

daughter. The receipt had been issued only for voluntary donation. Such a receipt had nothing to do with the registration of the marriage. The

defendant also denied that for all the marriages at Periapattanam Abdul Kafoor Alam Sha was requested to preside over several marriages. The

marriages should be conducted only by the persons assigned or appointed for the said purpose by Jamath. The contention that the defendant had

insisted that only Samsudin Lebbai should preside was also disputed. If registration by Jamath was required, then marriages should be only

conducted in accordance with the conditions prescribed by Jamath and only the

Pesh Imam of Jamath should preside over the marriage. If any other Pesh Imam belonging to other areas are invited it could be done so only with the approval of Pesh Imam, of Jamath. Therefore, the marriages conducted by the outsiders will not be registered in the marriage registers. Therefore, when the plaintiffs had informed about the ceremony being presided by the outsider the Jamath had made it clear that it will not be possible to register the marriage and therefore, the plaintiffs' expectation that the register would be brought to their marriage had no basis at all. No such assurance was also given by the defendants. Therefore, the Secretary, the defendant was not responsible for any of the events which are alleged to have taken place as a result of the register not having taken to the residence of the plaintiffs. The defendant further contended that assuming that the plaintiffs had any accountable claim, the plaintiffs ought to have impleaded the entire Jamath Committee including the President as parties to the suit. The defendant further contended that Abdul Kafoor Alam Sha alongwith the first plaintiff were responsible for division and Groupism within the Jamath resulting in Civil and Criminal disputes. It was further contended that at present all disputes were resolved and Jamath was being administered in a proper manner. But the plaintiffs were again trying to create problems and cleavage within the Jamath by filing the present suit against them.

4. The plaintiffs filed a reply statement disputing the defendants claim that there was no register for registering betrothal ceremony. There was no truth in the claim that it was only the President who was in charge of the affairs. The plaintiffs further contended that Abdul Kafoor Alam Sha was qualified to conduct the marriages and there was no truth in the statement that only persons authorised by Jamath alone should perform the marriage.

5. On the basis of the said pleadings and the evidence, the trial Court held that the plaintiffs did not prove - their,- contention that it was the Secretary's duty to register marriages, nor that the defendant had earlier agreed to register the marriage. There was also no proof of the plaintiffs having suffered any defamation or having undergone any physical or mental agony. With the result, the suit was dismissed. However, on appeal, the appellate Court held that it was only the Secretary who was in charge of the

marriage register and had also the duty to register the marriages. The appellate Court also relied on the proceedings of the Wakf Board earlier on the complaint filed by the first plaintiff regarding the very same incident as a result of which there was an enquiry and the defendant was removed from the Secretaryship and dismissed. The order of dismissal was questioned before this Court in a Writ Petition filed by the defendant and the contentions of the defendant was rejected. With the result, the appellate Court upheld the contentions of the plaintiff and decreed the suit as prayed for while allowing the appeal. Hence the present second appeal by the defendant.

6. Mr.K.Yamunan learned counsel for the appellant contended that (i) the right claimed by the plaintiffs was not a Civil or legal right which could be enforced and hence the suit itself was not maintainable, (ii) it was not the duty of the Secretary alone either to maintain the register or to register the marriages and that (iii) there was no evidence or proof of any damage to the plaintiffs.

7. Mr.Desikan, learned counsel for the respondents however, contends that when once it is established that it was the practice of the Jamath to register the marriages, it was an enforceable Civil right and hence the plaintiffs had a legal right to enforce the same. The relief claimed was not based only on the averment of defamation, but also the conduct of the defendant having resulted in mental agony and pain to the plaintiffs. He would also strongly rely on the proceedings of the Wakf Board and its conclusions and the result of the writ petitions filed by the defendant, and the learned counsel contends that the findings rendered in those proceedings were very much relevant and binding on the present suit.

8. In reply, Mr.K.Yamunan contends that no reliance can be placed on the Wakf Board Inspector's report since he was not examined as a witness.

9. The entire issues as raised by learned counsel for the appellant pertain only to questions of fact and appreciation of evidence except for the only point as to whether the right involved was a civil or legal right and consequently whether the suit was maintainable or not.

10. On this issue, Mr.K.Yamunan had referred some of the observations contained in the following texts holding that the Muslim Law does not

require registration of marriage. Nor the maintenance of any marriage registers. A valid marriage did not require any writing or recording the

marriage, nor was any ceremony essential. Paragraph 252 of Mulla's Principles of Mohamedan Law 19th Edition, which is as follows is relied

upon:-

252. Essentials of a marriage. - It is essential to the validity of a marriage that there should be a proposal made by or on behalf of one of the parties

to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two

female witnesses, who must be sane and adult Mahomedans. ...The proposal and acceptance must both be expressed at one meeting: a proposal

made at one meeting and an acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any religious ceremony is

essential.

11. Reference is also made to similar observations contained in pages 92 and 93 of Fyzee's "Outlines of Mohamedans Law - 4th Edition.

12. Learned counsel would further contend that the issue raised by the plaintiffs was not the legal right as it is commonly understood so as to give

rise to a cause of action before a Court of law. Reference is made to Salmond's elaboration of the essential characteristics of a legal right in

paragraph 41 of "Jurisprudence", Twelfth Edition, as follows:-

41. "The characteristics of a legal right

Every legal right has the five following characteristics: -

(1) It is vested in a person who may be distinguished as the owner of the right, the subject of it, the person entitled, or the person of inherence.

(2) It avails against a person, upon whom lies the correlative duty. He may be distinguished as the person bound, or as the subject of the duty, or

as the person of incidence.

(3) It obliges the person bound, to an act or omission in favour of the person entitled. This may be termed the content of the right

(4) The act or omission relates to some thing (in the widest sense of that word), which may be termed the object or subject matter of the right.

(5) Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

13. In support of his submission that a ceremony or a religious rite cannot be a subject matter of dispute before the Civil Court, teamed counsel

has relied on the following rulings.

14. In the judgment reported in Muniandi Kone and Others Vs. Sri Ramanatha Sethupathi, Hereditary Trustee of Arulmigu Mangalanathaswami

Temple and Another, , a learned single Judge of this Court held that suits relating to rites and rituals in a temple are not of a civil nature though on

the facts of the case, the learned Judge held that the right to take a deity in procession to another temple was a customary right and hence

enforceable.

15. In P.S. Muthukrishna Chettiar Vs. Meenakshi Ammal and Another, it was held that a suit for declaration of right to receive honours in a temple

was not maintainable.

16. Reliance was also placed on a judgment of Supreme Court in T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, in which the Supreme

Court, held that the Courts shall not interfere with the internal matters dispute"s pertaining to Clubs and private organisations like the Masonic

Lodge. In that case, the Supreme Court found that the source of power of associations like clubs and lodges to expel their members was the

contract on the basis of which the members are enrolled.

17. Mr.Yamunan"s objection to the maintainability of the suit, as may be culled out of his aforesaid contentions may be precisely stated as follows:-

Muslim Law does not require registration of marriage as a requisite for a valid marriage and hence there is no infringement of any legal or civil right

which is capable of being enforced in a Court of law and suit to enforce a religious rite or ritual does not lie.

18. I am unable to sustain the objection raised by learned counsel as regards the maintainability of, the suit on the ground that no legal or civil right

are involved. It is true that Muslim Law does not require registration of marriages. But it is one thing to say that the Personal Law does not require

registration and another thing to say that Muslims belonging to a particular place have adopted a custom of registering the marriages in a Pallivasal

or Jamath. It is not contended by Mr.Yamunan nor can it be contended that the Personal Law prohibits registration of marriages. The Personal

Law merely lays down that registration was not required for a valid marriage. A

Muslim marriage can be proved by direct evidence or in the absence of direct evidence by establishing prolonged continuous cohabitation or acknowledgement by the man of the paternity of the child or the acknowledgement by the man that a particular woman is his wife. In order to assure a proper mode of proof Muslims in an area may devise a process by which the proof of marriage would be made easier, namely, by registration by Jamath. In course of time, it develops into a custom, a valid custom which is not violative of the Personal Law. The custom would become invalid only if it is sought to be made mandatory and thus violative of the Personal Law. It is only a matter of choice by group of persons to ensure a system intended to provide a stronger and definite proof of marriage. The Muslim Personal Law (Shariat) Application Act, 1937, does not abrogate any custom or usage as long as such custom or usage are not contrary to the personal law. Therefore, if Muslims in a particular area have established and developed the practice of registration of marriages, it certainly ripens into a customary right. The following extract from Salmond on Jurisprudence - Twelfth Edition at Page No. 191, is a classical expression of the right based on custom:

Custom is to society what law is to the state. Each is the expression and realisation, to the measure of men's insight and ability, of the principles of right and justice. The law embodies those principles as they commend themselves to the incorporate community in the exercise of its sovereign power. Custom embodies them as acknowledged and approved, not by the power of the state, but by the public opinion of the society at large.

Nothing, therefore, is more natural than that, when the state begins to evolve out of the society, the law of the state should in respect of its material contents be in great part modelled upon, and coincident with, the customs of the society. When the state takes up its function of administering justice, it accepts as valid the rules of right already accepted by the society of which it is itself a product, and it finds those principles already realised in the customs of the realm.

19. Therefore, once it is established that the Muslims in the area or the members of Periapattanam Pallivasal had developed it as a custom to have the marriages, of willing persons to be registered, it assumes the character of a customary right and not a mere contractual right. Therefore, I am

unable to uphold the contentions of the learned counsel for the appellants that there is neither a civil nor a legal right which can be enforced. To

quote Salmond again (Twelfth Edition) vide Page 224 "a legal right may be defined as any advantage or benefit conferred upon a person by Rule

of Law" and in the present case, by custom and practice.

20. In the present case, the defendant does not dispute the fact that in the village there is a practice prevalent for several years to have the

marriages registered by the Jamath and that a Marriage Register is being kept, maintained and marriages are registered. There is no dispute over

the said fact. Therefore, the allegation that the defendant failed to respond to the demand for registration and thereby violated the customary right,

is a sufficient cause of action. Therefore, the suit is maintainable.

21. Learned counsel for the appellant also contended that there was no proper proof of damage, nor there any proof that it was only the Secretary

who was in charge of the maintenance of the Marriage Register and for the registration, thereof. Apart from the circumstances that the said

submission deals only with a pure question of fact and appreciation of evidence which cannot be interfered with in a second appeal, even

otherwise, on an analysis of the evidence it is very clearly established that it was the Secretary who was in charge of the Marriage. Register. The

fact that money was paid with the Jamath even one week earlier to the marriage, cannot also be disputed and the plaintiff had filed the receipt

Ex.A.2. In fact the defendant had chosen to deny these facts only in an attempt to generally deny all the suit allegations. In fact a perusal of the

written statement itself discloses that the defendant's absence and refusal to send the Marriage Register was really based on certain

misunderstandings between the parties. In fact, one of the allegations in the written statement is that the marriages conducted against the

administration of Jamath and against the consent of Pesh Imam of Pallivasal, would not be registered. The first plaintiff's daughters marriage was

conducted by Pesh Imam from outside the village. Therefore, no further proof is required to establish that the absence of the defendant and failure

to send the Marriage Register was intentional. There appears to have been some political rivalries also as between the parties.

22. The controversy regarding whether Pesh Imam from outside can perform the

marriage or not is immaterial and does not help the case of the defendant in any manner. In fact, D.W.3 himself who is a Pesh Imam examined on the side of the defendant, had categorically admitted in his evidence that several marriages had been conducted at Periapatnam by P.W.7, Abdul Kafoor Alam Sha with the approval of the Committee. Therefore, the contention that the Committee will not permit outsiders to Preside over the marriage is totally unsustainable and invented only for the purpose of the defence. Therefore, there is absolutely no basis for the contention raised by the defendant in not having been present"" during the marriage or in having failed to send the Register.

23. The evidence also clearly establishes that he had deliberately created the situation as a result of his bickerings with the plaintiffs which had undoubtedly resulted in the marriage being put off beyond the ""Muhurtham"" period. It has also resulted in unpleasant events on that particular day.

The consequences and effect of such untoward and unpleasant events in a solemn marriage function are very obvious and the resultant situation had been spoken to in a very detailed manner and proved by the witnesses examined by the plaintiffs,

24. I have arrived at my conclusions on the facts even without a reference to the proceedings before the Wakf Board which was initiated by the defendant and had resulted in the removal of the defendant from his post. I do not find any legal infirmity in relying upon the said proceedings. Even assuming that the findings rendered in those proceedings may not be conclusive and binding on the parties, the findings do have positive evidentiary value which can be relied upon as one of the circumstances in favour of the plaintiffs. This Court while dismissing Writ Petition No.11167 of 1983 filed by the defendant observed as follows as regards the conduct of the defendant - Judgment marked as Ex.A. 95.

It is seen that the Nikka Register is also not made available on some occasions and impediments have been put even in the matter of burial of the dead in the burial ground belonging to the mosque. It is a matter of deep regret that religious institutions too, should become hot-beds of the politics and give rise to conflicts and tensions.

25. Therefore, I do not find any ground to interfere with the well considered judgment of the appellate Court holding that the defendant was liable

to compensate the plaintiffs as prayed for.

26. In the result, the above Second Appeal is dismissed. No costs.