

(1998) 08 SC CK 0142

In the Supreme Court Of India

Case No : Civil Appeal No. 1552 of 1994

Penathil Maroli Radha and Another

APPELLANT

Vs

Vashayil Ukkandan Radha and Others

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Citation : (2001) 9 SCC 335

Hon'ble Judges : V. N. Khare, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N.KIRPAL, J.-This appeal by special leave is directed against the judgment of the Kerala High Court wherein in the second appeal the learned Single Judge reversed the concurrent findings of the trial court and the lower appellate court who had decreed the suit for partition filed by the appellant herein.

2. Briefly stated the facts are that on 30-6-1973, Appellant 1, Appellant 2 being her daughter, is alleged to have married one V. Ramakrishnan. On that day, prior to marriage, a marriage agreement is stated to have been executed by the parties which was duly witnessed and then registered with the Sub-Registrar. This was followed by a marriage ceremony, according to customary rites, which took place in Appellant 1's house. Out of this wedlock Appellant 2 was born on 9-5-1974.

3. Ramakrishnan died on 7-2-1978. Thereafter the appellants herein filed Original Suit No. 18 of 1986 seeking partition of the immovable property and sought a separate possession of 2/15th share of the said property. According to the plaint Ramakrishnan had a share in the property along with his mother and the respondents herein namely two sisters and a brother. On the death of Ramakrishnan, 1/3rd of his share would be inherited by his mother and 2/3rds of his share was inherited by the appellants herein. On this basis the appellants claimed 2/15th share in the said property. It may however be mentioned that

prior to the filing of the suit the mother of Ramakrishnan had died and her share is stated to have gone to the respondents and no claim was made by the appellants in the mother's share.

4. Before the trial court, apart from Ext. A-3, which was the marriage agreement dated 30-6-1973, Appellant 1 examined herself as PW 3. She deposed to the customary wedding ceremony which was performed after the execution of the said marriage agreement. This statement of hers was corroborated by PW 4, PW 5 and PW 6. On the other hand, the respondents deposed that none of them or other relatives had attended the wedding and the agreement Ext. A-3 also did not prove that a valid marriage had taken place.

5. The trial court came to the conclusion that the agreement Ext. A-3 by itself would not prove the marriage but it then referred to the evidence of PWs 4 to 6 and held that the said evidence corroborated the testimony of PW 3 (Appellant 1). By concluding that the appellant and Ramakrishnan had married in accordance with law the trial court decreed the suit on the basis that Appellant 1 was a widow and Appellant 2 herein was the legitimate daughter of Ramakrishnan.

6. The respondent then filed an appeal before the District Court, Thalassery. By a detailed and very well-written judgment the District Judge analysed the evidence on the record. He noticed that Ramakrishnan and the appellant belong to Thiyya community and according to the testimony of the said witnesses tying of mangalliyasootara or thali around the neck of the bride by the bridegroom was an essential rite to be performed so as to constitute a valid marriage between a man and a woman in the Thiyya community. That this ceremony was performed was deposed to not only by Appellant 1 but was also corroborated by PWs 4 and 5. It is true that PWs 4 and 5 witnessed the execution of Ext. A-3 but the lower appellate court came to the conclusion that they had also participated in and had witnessed the customary marriage which had taken place after the execution of the said document. The decree of the trial court was accordingly upheld.

7. The High Court in second appeal came to the conclusion that Ext. A-3 rather than supporting the customary marriage between Appellant 1 and Ramakrishnan tended to negate any formal marriage ceremony having been gone through by them. In support of this conclusion reliance was placed by the High Court on a Division Bench decision of Kali v. Kamalakshi Amma. As we read the judgment of the High Court this appears to be the sole basis for it to come to the conclusion that there was no valid marriage between Appellant 1 and Ramakrishnan.

8. Ext. A-3 namely the marriage agreement reads as follows:

"MARRIAGE agreement jointly executed by (7) Vashayil Ukkandan Ramakrishnan, trader aged 32 years, son of Koran, Thiruvangadam Amsom, Thalassery Taluk, (2) Radha, aged 20 years, unemployed, daughter of KunhIRaman, KodiYeri amson Moozhikara desom. This marriage agreement is entered into on the basis that No. 1 among us has agreed to accept No. 2 among us as his wife and No. 2

among us has agreed to accept No. 1 among us as her husband. We hereby agree that since from today onwards we will be husband and wife and in order to rule out any possibility of dissatisfaction, No. 1 among us will not accept another wife during the lifetime of No. 2 among us and No. 2 among us will not accept another husband during the lifetime of No. 1 among us and that one should not desert the other. This marriage agreement is executed with full and free consent and is signed by us in the presence of witnesses. This agreement has been written and signed in Thalassery."

9. According to the evidence of the witnesses this agreement was entered into and registered before the customary marriage was performed in the house of Appellant 1. This document states that the parties have agreed that they will not take another spouse and that they have accepted each other as husband and wife. But, as already noted, after execution of this agreement a customary marriage ceremony did take place as witnessed by PWs 4 to 6. The aforesaid decision of Kali case is clearly distinguishable because in that case the parties had lived together for a number of years and the wording of the document was such that it showed that no marriage had actually taken place amongst them. The relevant portion of the document with which the Kerala High Court was concerned in that case was as follows:

"3. Ext. P-1 is at once an admission of cohabitation, and a negation of a marriage having taken place between the parties. A document like Ext. P-1, will not solemnise 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 Ext. P-1."

10. The reading of this passage clearly shows that "marriage in accordance with the custom of the community has not been conducted". In the absence of any evidence of marriage ceremony having taken place the High Court in Kali case rightly came to the conclusion that the document did not prove that the parties were legally married to each other. In the present case however, Ext. A-3 does not by itself show that a marriage between the parties had taken place. Marriage in the instant case as per customary rites was proved by the testimony of Appellant 1 as well as the evidence of PWs 4 to 6.

11. In the light of the evidence on record we are clearly of the opinion that the High Court erred in upsetting the concurrent finding of fact arrived at by the trial court and the lower appellate court. No question of law, leave alone a substantial question of law, arose in this present case and even on the evidence on record the appellants were able to prove a valid marriage having taken place between Appellant 1 and Ramakrishnan. The appellants, being two of the legal heirs of Ramakrishnan were therefore entitled to 2/15th share of the property in question.

12. For the aforesaid reason this appeal is allowed. The judgment of the High Court is set aside and that of the District Judge, Thalassery is restored. The effect of this would be that the suit of the appellant would stand decreed. No

costs.