

(2016) 03 KL CK 0049
In the High Court Of Kerala
Case No : Mat. Appeal No. 182 of 2016

P.R. Thankamani	Vs	APPELLANT
P.K. Ramachandran		RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Evidence Act, 1872 — Section 114(e)

Citation : (2016) 03 KL CK 0049

Hon'ble Judges : C.K. Abdul Rehman and S.P. Chaly, JJ.

Bench : Division Bench

Advocate : P. Chandrasekhar, Uma, K. Nandakumar, Abdul Raheem P.K., V.A. Haritha, Mary Reshma George, P.M. Mazna Mansoor and S. Prasanth, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Chaly, J.—1. The above appeal is filed against the judgment in O.P. No. 873 of 2015 on the files of the Family Court, Kottayam at Ettumanoor, dated 21.11.2015, whereby the Family Court has dismissed the Original Petition filed by the appellant refusing to declare the marriage between the appellant and the respondent null and void.

2. The facts required for the disposal of the appeal as discernible from the appeal memorandum are that: The appellant and respondent lived together from 1976 to 1987. They were not legally married. There was no customary marriage nor there was any registered marriage between the appellant and the respondent. The respondent and his family members were members of Communist Party of India (Marxist) and did not believe in customary marriage. The appellant was employed in the Middle East from 1987. Though the marriage was registered in the Panchayat, the said registration was not as per any valid law. After the appellant went to Middle East and got employment in King Fahad Hospital, the respondent separated from the appellant.

3. On 26.11.1993 the appellant was married by one Mr. D. Rajasekharan Nair as per a marriage agreement. After the death of the wife of Rajasekharan Nair, he married the appellant at Kalkulangara Bhagavathy Temple as per Hindu customary marriage and rites and ceremonies. The marriage was registered as per Kerala Marriage (Common) Rules, 2008 at Chanaganacherry Municipality on 06.11.2008. The appellant and the said Rajasekharan Nair were living together as husband and wife from 1995 onwards and their marriage was solemnized on 03.11.2008 as per the customs and traditions prevailing in the Hindu community.

4. The said Rajasekharan Nair was a Divisional Forest Officer in the service of Government of Kerala. He retired from service on 28.02.1994. After the marriage of the appellant and the said Rajasekharan Nair, appellant was nominated by him for receiving family pension in the place of his former wife, Smt. Easwary R. Nair who passed away on 06.08.2008. The children of said Rajasekharan Nair in the earlier marriage were all grown up, married and gainfully employed and are not entitled to family pension.

5. It is the further contention of the appellant that, however the Government did not grant family pension to the appellant. In such circumstances, appellant challenged the order of the Government before the Kerala Administrative Tribunal [for short, "the KAT"]. But the Tribunal dismissed the said application, leaving open the right of the appellant to approach the Family Court for securing declaration that there was no valid marriage between the appellant and the respondent. That apart, it is contended by the appellant that the family pension was declined to her on the ground that she was married to the respondent and that her marriage with aforesaid Rajasekharan Nair was invalid.

6. It is thereafter that the appellant has filed O.P. No. 873 of 2015 before the Family Court. The respondent did not appear and was set ex parte. The contention of the appellant is that, the respondent being ex parte, did not deny the claim of the appellant that there was no valid marriage between the appellant and the respondent. That apart, the marriage between the appellant and the Rajasekharan Nair had been duly registered under Rules.

7. With the above pleadings and other claims and demands, the Family Court has raised the following two points for consideration:

"1. Whether there was any legal marriage between the petitioner and respondent?

2. Whether the certificate of registration of marriage dated 31.12.1979 is void-ab-initio?"

8. Appellant was examined as PW1 and Exts.A1 to A7 were marked from the side of the appellant to prove her case. However, the Family Court was not satisfied with the nature of proof and the evidence adduced by the appellant so as to grant an order of declaration that the marriage between the appellant and the respondent was null and void. Therefore, the Family Court dismissed the Original

Petition filed by the appellant and it is thus challenging the said order of the Family Court, this appeal is preferred as provided under the Family Courts Act.

9. Heard learned counsel for the appellant.

10. The predominant contention advanced by learned counsel appearing for the appellant is that the appellant had deposed before the court that she cohabited with the respondent for about 11 years on the basis of a marriage agreement and 3 children were born out of their cohabitation. But the appellant and the respondent never got married as per the Hindu rites and custom. Even though the marriage of the appellant and respondent was registered with the Thrikkodithanam Grama Panchayat on 31.12.1979 as per the Hindu Marriage Registration Rules, 1957, that by itself is not a conclusive proof or evidence to establish that there was a marriage between the appellant and the respondent. The said marriage certificate was marked by the court below as Ext. A1, which shows that a marriage between the appellant and the respondent was registered before the Marriage Officer reckoning that the marriage was solemnized on 25.12.1979 and the date of registration is 31.12.1979, i.e. within six days from the date of solemnization of the marriage.

11. That apart, it is contended by learned counsel for the appellant that the appellant left for Saudi Arabia as a Hospital Assistant in the year 1987 and thereafter the relationship between the appellant and the respondent was strained and accordingly they were living separate. It is also the contention that on 26.11.1993, they entered into Ext. A2 agreement by which they have decided to terminate their relationship and it was thereafter that the appellant had entered into the marriage agreement on 27.09.1995 with the above said Rajasekharan Nair, who is a retired Divisional Forest Officer and they started residing together as man and wife. A copy of the said agreement is marked by the court below as Ext. A5. That apart, it is contended that Rajasekharan Nair was having his wife and 5 children when Ext. A5 was executed, and later the wife of Rajasekharan Nair died on 06.08.2008 and thereafter the marriage between the appellant and the respondent was solemnized as per the rituals, custom and traditions prevailing under the Hindu Marriage Act at Sree Kalkulathukavu Bhagavathy Temple, on 03.11.2008. The said marriage certificate issued by the Temple is marked as Ext. A3 and the marriage certificate issued under the Kerala Registration of Marriages (Common) Rules, 2008 is marked as Ext. A4. After the marriage, it is contended by the learned counsel for the appellant that the appellant was nominated for the benefit of family pension by Rajasekharan Nair in the place of his former wife late Eswari R. Nair, evident from Ext. A6, copy of letter nominating the appellant for receiving the family pension. Subsequently on 23.01.2009 Rajasekharan Nair passed away.

12. According to learned counsel for the appellant, the trouble shot up when the appellant applied for family pension, the children of deceased Rajasekharan Nair opposed the same by contending that the marriage between the appellant and Rajasekharan Nair was void as at that time a valid marriage was subsisting

between the appellant and the respondent. Since the said marriage was not terminated, the appellant could not have entered into a legal marriage with the said Rajasekharan Nair. It was thereupon an enquiry was conducted by the Chief Conservator of Forest and the claim of the appellant was declined. Even though the said order was challenged before the KAT, the same was dismissed as per Ext. A7 order dated 30.12.2014.

13. The appellant contends that KAT has clarified in Ext. A7 order that the appellant is at liberty to approach the Family Court and if so the findings thereunder will not affect her contentions. It is under such circumstances, the appellant has approached the Family Court seeking the relief of declaration.

14. Having appreciated the circumstances put forth by learned counsel for the appellant and the documents produced for our perusal, we have no doubt with regard to the contention put forth by the learned counsel that, Ext. A1 certificate issued under the Hindu Marriage Registration Rules, 1957 is not a conclusive proof to establish that a valid marriage of the appellant and the respondent had taken place. It is well-settled that in order to prove a marriage, necessary evidence should be adduced to establish that in accordance with the custom and rituals prevailing in the community a marriage has taken place in the presence of other witnesses. The Family Court has appreciated the evidence tendered by the appellant and has entered into a finding that even though Ext. A1 certificate was produced and contended that the same is not a conclusive proof, the appellant has not cared to adduce any evidence to conclusively establish and prove that the marriage between the appellant and the respondent has not taken place. That apart, the long cohabitation of the appellant with the respondent was admitted by the appellant herself and it is not in dispute that 3 children were begotten in the said wedlock. So also, we find that Ext. A2 agreement is only an agreement to dissolve their marriage and the same will not dissolve the marriage by virtue of the recitals contained thereunder. A marriage solemnized can be dissolved only by resorting to the provisions of law under the Hindu Marriage Act. Moreover, as per Exts.A1 and A2, the marriage is admitted by the appellant and in order to establish that there was no properly constituted marriage or there was no marriage at all, the appellant was bound under law to adduce sufficient evidence to convince the court and establish her case that there was no valid marriage between the appellant and the respondent.

15. Moreover, from Ext. A2 copy of agreement produced for our perusal, we find that the recitals are to the effect that the appellant and the respondent were residing together as husband and wife and while so, they have decided to dissolve their marriage as per Ext. A2 agreement. Therefore, the circumstances, and the evidence produced by the appellant herself will go to establish that prima facie there was evidence of marriage between the appellant and the respondent, and therefore the court can always presume as provided under Sec.114(e) of the Evidence Act that Ext. A1 document is a properly constituted document and the same is the outcome of the official exercise undertaken by the Marriage Officer.

Therefore, the appellant was duty bound to rebut the presumption as provided under law and prove that there was no marriage at all. The appellant did not make any endeavour to establish before the court below that there was no marriage existing between the appellant and the respondent at the time when appellant got married with Rajasekharan Nair, as per the custom prevailing in the Hindu community.

16. The appellant has also raised a relief to declare that Ext. A1 certificate issued by Thrikkodithanam Grama Panchayat is null and void. Suffice to say, the appellant has not cared to adduce any evidence in connection with the said prayer put forth by the appellant. That is also an instance which militates against the appellant.

17. Yet another contention advanced by learned counsel for the appellant is that since the respondent remain ex parte, the pleadings put forth by the appellant is to be accepted by the court below since there were no contra pleadings or evidence to prove otherwise. We do not think that, it is the correct position of law. When a declaration is sought to declare a marriage null and void, especially with the admission made by the appellant herself that, she was living with the respondent and cohabited for a period of 11 years and 3 children were begotten, the burden cast upon the appellant was heavy and it will not shift to the respondent unless and until it is prima facie established that Ext. A1 certificate issued for the conduct of the marriage under Hindu Marriage Registration Rules is not a properly constituted one.

18. The respondent has no duty at all to adduce evidence, unless and until the burden of proof is discharged by the appellant under law. So also, it is not mandatory that a trial court is to accept the pleadings and evidence put forth by a party as of right, when the respondent is set ex parte. But the trial court always had the option to accept or ask the appellant to adduce sufficient evidence to establish the case put forth by her. Thus the Family Court after appreciating the pleadings and evidence has entered into a categorical finding that appellant has not adduced sufficient evidence to the satisfaction of the court to grant the declaratory reliefs sought for by the appellant. On re-appreciation of the pleadings and the evidence put forth by the appellant, we are of the considered opinion that the Family Court was right in holding that there was no sufficient evidence before the court in order to enable the appellant to secure the declaratory reliefs. We do not find any illegality, impropriety, other legal infirmities or incorrectness so as to interfere with the order of the Family Court.

Resultantly, the appeal fails and the same is accordingly dismissed.