
(1953) 01 KAR CK 0006
In the Karnataka High Court
Case No : Misc. Appeal No. 20 of 1952-53

Rajammal

APPELLANT

Vs

Mariyammal and Another

RESPONDENT

Date of Decision : 15-01-1953

Acts Referred:

Citation : AIR 1954 Kar 38 : (1953) ILR (Kar) 588 : (1954) 32 MysLJ 101

Hon'ble Judges : Medapa, C.J.; Vasudevamurthy, J

Bench : Division Bench

Advocate : C.B. Motaiya, for the Appellant; T.V. Nathamuni Iyer, for the Respondent

Judgement

1. The appellant and respondent 1 in a joint petition applied under the provisions of the Mysore Silicosis Rules for the award of compensation to them for the death of their husband B. Periathambi from the Mysore Gold Mining Company of India Ltd., Kolar Gold Fields. The petition which contained a clear and unambiguous averment that each of them was the married wife of the deceased was jointly signed by the appellant and respondent 1, The Commissioner for Workmen's Compensation, K. G. F. recorded the evidence of the appellant and respondent 1 and the sister of the deceased and pronounced his order dated 10-6-1952 awarding the amount deposited by the Mysore Gold Mining Company as compensation for the death of Periathambi to respondent 1 and her son, respondent 2. He disallowed the claim of the appellant for apportionment of the compensation on the ground that being a Christian, her marriage with the deceased Periathambi who at the time of the marriage was a Hindu, was invalid and could not be recognized according to law.

2. The learned Counsel for the appellant contends: (1) that the Commissioner was wrong in going into the validity of the marriage inasmuch as no one disputed the validity of the marriage, and (2) that in any event, the conclusion of the Commissioner that the marriage was invalid according to law is opposed to law and therefore incorrect. The learned counsel for the respondents, however,

supported the decision of the Commissioner on the ground that under Hindu Law, no marriage between a Hindu and a Christian can be valid or recognized.

3. The order of the Commissioner does not make it clear how or why or under what circumstances he came to consider the validity of the marriage when neither respondent 1 nor anyone else raised that question before him and when, as already stated, both the appellant and respondent 1 admitted in the joint petition they filed their respective status as married wives of the deceased Periathambi. Respondent 1 reiterated and affirmed this status of the appellant in her evidence before the Commissioner. The sister of the deceased also in her evidence specifically stated that the -appellant is the married wife of the deceased. The materials on record thus make it clear that apart from the averments and admissions in the petition and the oral evidence in the case that the appellant is the wife of the deceased Periathambi, the conduct of the relatives of the deceased and their treatment of the appellant point to the conclusion that she is the wife of the deceased. The presumptions of law are also in favour of legitimacy and the validity of marriages.

It is conceded that Periathambi does not belong to the twice-born classes and it therefore follows that the strict injunction of Hindu Law that marriages must be within caste is not applicable to him. The doctrine of "factum valet" viz. the proposition "that which ought not to be done, if done, is valid will be applicable to the facts of this case and one of the effects of that doctrine is that when the factum of marriage is admitted every presumption should be made in favour of the validity of the marriage. It would be unjustifiable interference for the Courts to declare a marriage null and void when it is accepted by the members of the caste as valid.

4. It must be noted in this connection that the evidence of the appellant is to the effect that she was married to the deceased according to Hindu rites. The observation of Sankaran Nair J. in --"Muthusami Mudaliar v. Masilamani" 33 Mad 342 (A) that:

"A marriage contracted according to Hindu rites by a Hindu with a Christian woman who, before marriage, is converted to Hinduism, is valid when such marriages are common among and recognized as valid by the custom of the caste to which the man belongs, although such marriage may not be in strict accordance with the orthodox Hindu religion"

is therefore apposite. It may also be mentioned that succession and inheritance in Hindu Law do not exclude illegitimate children & their mothers, more particularly among the Sudras. There is, besides, no rule of Hindu Law which forbids the subsistence of a marriage one of the parties to which is a non-Hindu, that is to say, Hindu Law does not refuse to recognize a conjugal union merely by reason of a difference of religion see -- Mrs. Chandramani Dubey and Another Vs. Rama Shankar Dubey and Others, . This position received statutory recognition in India Act 21 of 1949, though that Statute is limited in its scope to Hindus,

Jains and Sikhs, and is in consonance with the prevalent trend of public opinion in a secular State.

5. We therefore set aside the order of the Commissioner for Workmen's Compensation and direct the Commissioner to apportion the compensation between the appellant and the respondents according to law. The costs of this appeal will be paid by the respondents.

6. Appeal allowed.