

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:31.01.2017

Pronounced on:09.02.2017

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

SECOND APPEAL No.996 of 1999

Rajabunnisa Begum

..Appellant

/versus/

1.Johara Beevi

2.Kamaludeen

3.Anwardheen

4.Mumtaz

5.Jahabar Nachiar

6.Malliga Beevi

7.State Bank of India,
Mannargudi rep.by its
Branch Manager, Mannargudi Po.
Tiruvarur.

8.Indian Bank, Needamangalam
rep.by its Branch Manager at
Needamangalam,
Tiruvarur District.

9.State Bank of India,
Koothanallur rep.by its
Manager, Koothanallur,
Tiruvarur District.

10.Canara Bank, Kumbakonam,
rep.by its Branch Manager,
Kumbakonam, Thanjavur District.

11.Indian Bank, Koothanallur,
rep.by its Branch Manager,
Koothanallur, Tiruvarur District.

12.UCO Bank, Kumbakonam,
rep.by its Branch Manager,
Kumbakonam, Thanjavur District.

.. Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 07.08.1998 made in A.S.No.68 of 1997 on the file of the Additional District Judge, Nagapattinam, reversing the judgment and decree dated 10.10.1996 made in O.S.No.136 of 1993 passed by the Principal Subordinate Judge, Nagapattinam.

For Appellant :Mr. K.K.Ramakrishnan

For Respondents :Mr.S.K.Rakhunathan for R1 to R6
Mr.M.L.Ganesh for R10
Mr.V.Suthakar for R12
R7 to R11- No appearance

J U D G M E N T

Rajabunnisa Begum, who is the plaintiff in the suit for partition is the

appellant before this Court.

2. The case of the appellant is that she was married to one P.M.S.Abdul Rahim of Podakkudi Village as his second wife and the marriage was solemnized at Nagore Dargah on 21.12.1987. The said P.M.S.Abdul Rahim died on 01.08.1990 leaving behind the appellant, the first respondent, who is the first wife of P.M.S.Abdul Rahim and respondents 2 to 5, who are the children born to him through the first defendant. Though P.M.S.Abdul Rahim during his life time, wrote a Will bequeathing some of his properties in her favour, the said Will has been lost. After the death of P.M.S. Abdul Rahim, she was thrown out from the house owned by the deceased P.M.S.Abdul Rahim by the defendants 1 to 6. Therefore, claiming 1/16th share in the estate of P.M.S.Abdul Rahim, which includes immovable properties and valuable securities in the banks of respondents 7 to 12, the present suit is laid.

3. The respondents 1 to 6 herein contended in their written statements that the appellant is not the legally wedded wife of P.M.S.Abdul Rahim. She was some times a concubine to him. The alleged marriage between him and the appellant on 21.12.1987 is false and the documents relating to that are all fake and fabricated. After the death of P.M.S.Abdul Rahim, taking advantage of her

illicit relation with him, the appellant tried to blackmail the defendants' family. Therefore, through the Mediators of Needamangalam Pallivasal the matter was settled and the appellant received Rs.25,000/- on 26.12.1989 to relinquish her claim against the family of P.M.S.Abdul Rahim. However, to extract more money she has filed the suit for partition without any legal right.

4. On the above pleadings, the trial Court framed the following issues:-

"(1)Whether the plaintiff is the wife of P.M.S.Abdul Rahim?

(2)Whether the plaintiff is entitled for share in the suit property as claimed?

(3)What are the other reliefs the plaintiff is entitled to?"

5. The trial Court, considering the evidence let in by both the parties, allowed the suit by passing a preliminary decree of declaring 1/16 share in the favour of the plaintiff. Aggrieved by that, the defendants 1 to 6 preferred the appeal in A.S.No.68 of 1997 before the Additional District Court, Nagapattinam, which in turn re-appreciated the evidence and allowed the appeal, resulting in dismissal of the suit. The first appellate Court held that the plaintiff has not proved the alleged marriage between her and P.M.S.Abdul Rahim on 21.12.1987. The Marriage Certificate[Ex.A1] has not been proved in the manner

known to law and it is not a true and valid document to prove the marriage. Suffered by the reversal judgment of the trial Court, the present appeal has been filed on the following Substantial Questions of Law:

(1) Whether the first Appellate Court is correct in law in disbelieving the Marriage Certificate produced on the side of the plaintiff/appellant dated 21.12.1987, which proves the marriage between the appellant and Abdul Rahim without any direct and clinching contra evidence thereto?

(2) Whether the first Appellate Court has committed an error of law in not accepting the long cohabitation between the appellant and Abdul Rahim to prove the marriage between them?

(3) Has not the first Appellate Court committed an error of law in declining to grant a decree in favour of the plaintiff/appellant in respect of her 1/6th due share in the suit properties, by virtue of her status as the legally wedded wife of Abdul Rahim entitled under the Muslim Law?

6. The learned counsel appearing for the appellant submitted that under Muslim law, a Muslim can marry upto four wives and the marriage being a contract, the lower appellate Court has disbelieved the second marriage on very flimsy reason, which does not stand the scrutiny of law. The witnesses examined on behalf of the plaintiff, ration card, passport, bank Account jointly in the name of the plaintiff and the deceased P.M.S.Abdul Rahim, coupled with Ex.A1- Marriage Certificate all clearly establishes the long co-habitation between the appellant and the deceased P.M.S.Abdul Rahim, which gives ample inference and proof of marriage. Therefore, the judgment of the lower appellate Court ought to be set aside.

7. Further, the learned counsel appearing for the appellant, relying upon Ex.A2 photograph, which is admitted to be the photo of the plaintiff with the deceased Abdul Rahim, submitted that the admission of the defendants that Abdul Rahim had relationship with the plaintiff coupled with Exs.A1 and A2 establish long cohabitation and therefore, the marriage is to be presumed under relying upon judgments rendered by Courts recently in connection with long co-habitation and live-in-relationship.

8. Per contra, the learned counsel appearing for the respondents submitted that while the trial Court miserably failed to appreciate the evidence in a proper perspective and failed to see that the plaintiff time and again have changed her pleadings and has created documents subsequent to the suit, so as to make an unjust enrichment out of her illicit intimacy with the deceased Abdul Rahim. Contrarily, the lower appellate Court has gone into the law governing Muslims while performing the second marriage and also the validity of Ex.A1- Marriage Certificate alleged to have been issued by Nagore Dargah and found that it is a fabricated document spoken by the person, who is not competent to speak about it. It held that failure to produce the original Marriage Register normally kept in the custody of the Dargah and non examination of the person, who has performed the alleged second marriage clearly shows that there was no marriage held on 21.12.1987 at Nagore Dargah. A place, which is totally alien for both the plaintiff and the deceased P.M.S.Abdul Rahim.

9. Considering the said submission in the light of the evidence let in by the parties, this Court finds that the plaintiff examined herself as PW1 has deposed about her relationship with the deceased P.M.S.Abdul Rahim, how she got

marriage with him. In her cross examination, she has stated that she got engaged with Abdul Rahim in the year 1982, when she was about 12 years old and she had acquaintance with Abdul Rahim even before that. She is not able to tell the name of the Kazi, who performed her marriage at Nagore Dargah. She admits that she belongs to Needa Mangalam Pallivasal and Abdul Rahim belongs to Podukudi pallivasal. However, she could not explain, why their marriage was solemnised at Nagore Jamath to which neither of them belong. She admits that the consent of the respective pallivasal was not obtained before their marriage which is the normal procedure followed, while the marriage solemnised beyond territory of bride and bridegroom Jamath.

10. The specific case of the plaintiff is that she was 12 years old and got marriage in the year 1987 when she was about 17 years old and at the time of her marriage, Abdul Rahim was 50 years old. This claim is proved to be false through Exs.B1 and B2 passports issued by Republic of India in the name of Abdul Rahim. The photographs found in these two documents are identified and accepted as the photo of Abdul Rahim by the plaintiff. These two Exs.B1 and B2 show the year of birth of Abdul Rahim as 1917. On 21.12.1987 Abdul Rahim was almost 70 years old and not 50 years as claimed by the plaintiff and the

witnesses spoken on her behalf.

11. According to the plaintiff and the witnesses spoken in support of the plaintiff, the age of the deceased Abdul Rahim at the time of marriage was 50 years whereas that has been falsified by the entries found in the passport of the deceased Abdul Rahim. Actually, during the year 1987, the deceased Abdul Rahim was aged about 70 years and it is highly doubtful whether such marriage was really solemnized and Abdul Rahim referred in Ex.A1 is the same person, whom the person the plaintiff alleged to have married. This discrepancy has been taken note by the lower appellate Court and has rightly rejected the plaintiff's case. Therefore, there is no ground to interfere with the findings of the lower appellate Court.

12. Yet another document relied by the appellant is the Bank Account, which stood in the joint name of Abdul Rahim and the appellant. P.W.5, one Mr.Gopal, Assistant Manager of Indian Bank, Needamangalam, has spoken about this document, which has been marked as Ex.X7. It has been elicited through PW5 that in the account opening form Abdul Rahim has not mentioned, what is the relationship between him and the plaintiff. So, mere a joint account in the

name of two persons cannot give an inference they are husband and wife. It is the admitted fact that Abdul Rahim had coconut grove and that was looked after by the mother of the plaintiff. It is also the admitted fact that Abdul Rahim purchased that property only in the year 1983. Therefore, the evidence of the plaintiff that she had been in relationship with Abdul Rahim since 1980 when she was hardly 10 years old, is also unbelievable. She admits that after the death of Abdul Rahim, the defendants gave her a sum of Rs.25,000/- and she executed Ex.B17 release deed and encashed money, but denies the voluntariness of Ex.B17.

13. It is the specific case of the plaintiff that she got married with Abdul Rahim aged about 50 years at Ahlas Sunnath Val Jamaath, for that she relied upon Ex.A1-Marriage Certificate. One Abdul Rahim examined as PW6 has spoken about the marriage held between the plaintiff and Abdul Rahim. He is the Arabic Teacher in Nagore and one of the members of Ahlas Sunnath Val Jamaath and through him the plaintiff has marked Ex.X12. This document appears to be a marriage invitation between Abdul Rahim and Raja Boonisa Begum to be held on 19.09.1982 at the residence of bridegroom at Singapore, 20 Kimdiyan Road. If this document is to be accepted, then the plaintiff had

married Abdul Rahim once in the 1982 when she was in 12 years old and again she married on 21.12.1987 as per the Marriage Certificate[Ex.A1]. Both are highly improbable.

14. P.W.6 admits that the marriage Register is in the custody of Jamath but he has not produced that Marriage Register. However, he has retracted saying that there is no Marriage Register maintained by the Jamath. So, the only evidence to rely upon for the alleged marriage is Ex.A1. It has been rightly rejected by the lower appellate Court, since it is a letter pad document without any details about the Jamath. Whether it is registered under Wakf Act and whether the persons, who have signed as witnesses are really persons competent to be witnesses for any marriage under Muslim Law? are not been proved. The marking of this document without the above details have been objected by the defendants. Subject to their objection it has been marked as Ex.A1, however, there is no ruling given by the trial Court about its admissibility. The lower Appellate Court has rightly gone into these aspects and disbelieved the case of the plaintiff, since she failed to prove the marriage between the plaintiff and Abdul Rahim.

15. This Court finds no error in the finding of the lower appellate Court and the substantial question of law raised by the appellant held against the appellant.

16. In the result, the Second Appeal is dismissed. No order as to costs.

09.02.2017

Index:yes/no
Internet:yes/no
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Dr.G.Jayachandran, J.

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To

- 1.The Additional District Judge, Nagapattinam.
- 2.The Principal Subordinate Judge, Nagapattinam.

Judgment made in
S.A.No.996 of 1999

09.02.2017

<http://www.judis.nic.in>