

Mahammadunni's Son Kappatta Kathokandath Bava

Vs

Kunhoosa's Son Ampalath Veettil Kunnathodath Mahammadunni and 20 Others

Civil Appeal No. 1268 of 1970

(M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

02.12.1975

JUDGMENT

RAY, C. J. -

1. This is an appeal by certificate from the judgment dated July 17, 1969 of the High Court of Kerala.
2. The question in this appeal is whether defendants Nos. 1 and 4 are each entitled to share in the property allotted to defendant No. 3 in a partition decree. Defendant No. 4 is the appellant.
3. This appeal arises out of a suit instituted on November 19, 1957 for partition of properties. Properties mentioned in Schedules A and B to the plaint belonged to the mother of defendant No. 3. Properties mentioned in Schedule C to the plaint were joint properties of the father and the mother of defendant No. 3.
4. The plaintiff and defendant No. 2 are the sons of one of the brothers of the mother of defendant No. 3. Defendant No. 1 is the son of another brother of the mother of defendant No. 3. Defendant No. 4 is the son of defendant No. 3's father's brother.
5. Defendant No. 3 died during the pendency of the suit. Thereafter defendant No. 1 filed his additional written statement and claimed half share in the property of defendant No. 3 on the ground that defendant No. 1 has married defendant No. 3 on August 30, 1959.
6. The trial Court allotted to defendant No. 3  $\frac{3}{6}$ th share in properties mentioned in Schedules A and B to the plaint. The plaintiff and defendant No. 1 and defendant No. 2 were each given  $\frac{1}{6}$ th share in properties in Schedules A and B to the plaint. With regard to Schedule C properties the plaintiff and defendant No. 1 and defendant No. 2 were each given  $\frac{9}{96}$ th share and defendant No. 3 was given  $\frac{51}{96}$ th share and defendant No. 4 was given  $\frac{18}{96}$ th share.
7. The trial Court found that defendant No. 4 was alone entitled to the share defendant No. 3 on the ground that marriage of defendant No. 3 with defendant No. 1 was not proved. The trial Court also found that defendant No. 3 was mentally unsound to enter into any marriage.
8. Defendant No. 1 preferred an appeal. The High Court set aside the judgment of the trial Court and held that defendant No. 1 was married to defendant No. 3 and defendant No. 3 was in a lucid interval at the time of marriage.
9. Counsel for the appellant defendant No. 4 impeached the finding of the High Court both with

regard to the fact of marriage and the finding that defendant No. 2 was married in a lucid interval. 10. Defendant No. 4 relied on three documents in support of the submission that defendant No. 3 was not a sane person to enter into marriage with defendant No. 1. The first document is Exhibit B-34 which is an order dated November 8, 1958 declaring defendant No. 3 to be a person of unsound mind. In that order defendant No. 3 and defendant No. 1 was appointed guardian of the person of defendant No. 3. The second document is Exhibit B-8 dated September 7, 1959. The appellant submitted that on September 7, 1959 defendant No. 3 wanted to get herself declared as a person of sound mind. By an order dated February 5, 1960 being Exhibit B-31 the District Judge dismissed the application of defendant No. 3. The third document on which the appellant relied is the suit in this appeal where defendant No. 3 on November 19, 1957 was impleaded as a person of unsound mind.

10. The appellant contended that though Exhibit B-34, namely, order dated November 8, 1958 declaring defendant No. 3 as a person of unsound mind was not a judgment in rem but it was a judgment interparties and it would, therefore, be admissible under Sections 11 and 13 of the Evidence Act. The appellant also contended relying on the decision in Amanchi Seshamma v. Amanchi Padmanabha Rao (ILR 40 Mad 660 : 33 IC 578 : 19 MLT 243) that once a person is adjudged insane it is presumed that state of unsoundness will continue until proved to the contrary.

11. Counsel for the appellant therefore contended that the conclusion of the High Court that defendant No. 3 was in a lucid interval at the time of marriage was against the overwhelming documentary evidence.

12. The documents relied on by the appellant do not rule out lucid interval at the time of marriage on August 30, 1959. The High Court relied on the evidence of DW 4 who attended the marriage. DW 4 was a teacher. His evidence was that defendant No. 3 at the time of marriage talked with Musaliar. His further evidence was that Musaliar called defendant No. 3 and she went near him and told him that he was being authorised by her to give her in marriage to defendant No. 1. The High Court rightly found that defendant No. 3 gave her consent to the marriage and was in her lucid interval.

13. The High Court reversed the finding of the trial Court and held that the marriage took place. The High Court relied on the oral evidence and found that marriage in fact was held. The conclusion of the High Court on both the questions is correct. The appeal is therefore dismissed. No order as to costs.

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