

Kamu alias Kamu Ammal and Others

Vs

M. Muthayya and Another

Civil Appeal No. 1485 of 1984

(Kuldip Singh, N. M. Kasliwal JJ)

25.09.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Kamu alias Kamala Ammal (Kamu) on her behalf and on behalf of her two minor daughters instituted a suit for partition and possession of 5/8th share in the suit properties. The properties were left by T. M. Meenakshisundaram (Sundaram) who died on June 28, 1967. Kamu claimed to be his second wife and the two minor daughters having been born out of the wed-lock. Muthulakshmi and Muthayya were defendants I and 2 in the suit. Muthulakshmi is the first wife of Sundaram and Muthayya his son from the said wife. Suit was decreed by the trial Court. On appeal by Muthayya the High Court by its judgment dated March 18, 1980: (reported in AIR 1981 NOC 172: (1981) 1 Mad LJ 107) reversed the findings of the trial Court and dismissed the suit filed by Kamu and her daughters. This appeal by Kamu and her daughters is against the judgment of the High Court.

2. According to Kamu she married Sundaram at a place called Srirangam in accordance with Hindu rites on May 30, 1948. First daughter out of the wed-lock was born on January 30, 1957 and the second on May 24, 1963. Sundaram was a Government servant in the Revenue Department and held various important posts including Tehsildar, Deputy Collector and Administrator. On September 24, 1956 Sundaram executed a registered maintenance deed in favour of his first wife wherein it is recorded that Sundaram married Kamu in the year 1948. On March 19, 1965 Sundaram nominated Kamu and her two daughters as nominees in the Government record for the purpose of family pension wherein he described them as his wife and daughters.

3. Muthayya contested the suit. In the written statement filed by him it was averred that Muthulakshmi was the only wife of deceased Sundaram. It was denied that Sundaram married Kamu as his second wife and two daughters were born out of the wedlock. It was also denied that any maintenance deed was executed by Sundaram in favour of Muthulakshmi. It was further denied that Kamu and her daughters were nominated by Sundaram in the Government records for the purpose of family pension. He pleaded that Kamu was living at Perikulam in Madhurai district with her father and she was employed as secondary grade teacher in a school till 1953. Muthulakshmi remained ex parte throughout the proceedings.

4. The learned trial Judge framed the issues that arose out of the pleadings and the main issue was whether Kamu was a legally wedded wife of Sundaram. The learned trial Judge referred to the oral and documentary evidence on the record and after appreciating the same came to the conclusion that

Kamu was a legally wedded wife of deceased Sundaram and that she and her daughters were entitled to 5 / 8th share in the properties left by Sundaram and described in Schedules A and B to the plaint. The only question that arises in this appeal is whether there was a marriage between Kamu and Sundaram at any time. It is correct that the said question has to be answered on the basis of the evidence produced on the record by the parties and ordinarily this Court is reluctant to go into the questions of fact determined by the Courts below but in a case where the appreciation of evidence by the Courts below has resulted in miscarriage of justice it would be open for this Court to be wiser by its own reading of the evidence.

5. Exhibit A-16 is a registered maintenance deed dated September 24, 1956. It is stated therein that Muthulakshmi the first wife of Sundaram. was not keeping good health from 1943 onward and was mentally unfit. It is further mentioned that since she could not provide family life to Sundaram, with her consent, he married Kamu as his junior wife in 1948. A sum of Rs. 25/- per month was fixed as maintenance for the first wife. The document shows that it was signed by Muthulakshmi and was attested by four persons including her mother. The High Court took the view that Exhibit A-16 was not signed by Muthulakshmi. We have read copy of the document along with learned counsel for the parties. After the signature of Sundaram. the document reads as under :

"Accepting the conditions of this deed, I, the person who gets this documents viz. Muthulakshmi animal have signed this.

Sd/- M. Muthulakshmi ammal

(in English)

Attestors

Sd/- T. Sellammal, daughter of Alamelu ammal, Dindugal now at Karur, mother of Muthulakshmi ammal (in English)".

6. It is thus, obvious that the registered maintenance deed was signed by the first wife of Sundaram and was attested by her mother. The document specifically states that Sundaram contracted second marriage with Kamu in the year 1948. The High Court refused to rely on the maintenance deed Exhibit A-16 on the following reasoning:

"It is significant to note that in Ex. A-16, the date of the second marriage is not mentioned. As the earliest document coming into existence after the alleged second marriage, one would have expected Meenakshisundaram to have remembered the date of the marriage and to have mentioned it, as it is not far removed from 1948 when the said marriage is said to have taken place. The vague reference to the year 1948 is significant, because in Madras a statute has been passed as the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949, (Madras Act VI of 1949). As the title itself shows, this Act prevented a second marriage between Hindus, perhaps, it was, considered necessary to select a date anterior to the coming into force of this Act, so that the validity of the second marriage would not be affected by it. The vague reference in Ex. A-16 to the marriage between the first plaintiff and Meenakshmisundaram in 1948 cannot in these circumstances, be taken to establish as a fact the marriage in 1948. It does not even refer to the place where the second marriage is alleged to have taken place. Ex.A-16 is thus of no avail to prove the

second marriage."

7. We are not inclined to agree with the High Court reasoning. The document Exhibit A- 16 was not executed to record the factum of marriage between Sundaram and Kamu. The document was a maintenance deed in favour of Mirthulakshmi. Had there been an intention to create evidence to show that the marriage between Sundaram and Kamu took place sometime anterior to the Madras Hindu (Bigamy Prevention and Divorce) Act 1949 it would not have been difficult for Sundaram to coin and give a specific date of marriage in the said document. Since the document was not the record of the second marriage - it being a maintenance deed - only the factum of second marriage and its timing were relevant factors which were mentioned. A reading of the document shows that it was written in the ordinary course and reference to the second marriage in terms was appropriate. Any further details about the second marriage would have been unnecessary and unnatural. In any case the signing of the document by Muthulakshmi and its attestation by her mother go a long way to show that both of them accepted the fact that Sundaram married Kamu in the year 1948. The High Court fell into patent error in rejecting the document Exhibit A-16 as an evidence to show that the marriage between Kamu and Sundaram took place in the year 1948.

8. Exhibit A-8 dated March 19, 1965 is a Family Pension Nomination Form filled by Sundaram. He described Kamu as his wife and appellants 2 and 3 as his daughters for the purpose of family pension. The High Court's criticism of the document is that it does not mention the date on which the marriage took place. There was no occasion for Sundaram to record the date of marriage in the Family Pension Form, only the relationship, of the person nominated with the Government servant, is to be mentioned in the said form. The fact remains that on March 19, 1965 much before the controversy, Sundaram described Kamu as his wife and two girls as his daughters.

9. Apart from the documentary evidence there is sufficient oral evidence on the record to prove that Sundaram married Kamu in the year 1948. PW 2 is maternal uncle of Kamu and PW 3 her mother's sister. These witnesses have deposed that the marriage took place at Srirangam in the month of May 1948 on Sunday between 5 a.m. and 6 a.m. and an Iyengar acted as the priest. The witnesses also give details of the ceremonies which took place on that occasion. The High Court rejected their testimony on the ground that they did not give actual date of marriage and further they were related to the appellant Kamu. We do not agree with the High Court. The witnesses remembered the year the month and the day. The very fact that they could not give the exact date goes to show that they were truthful witnesses and were not tutored otherwise it would not have been difficult for them to remember the tutored date. Close relations like PW 2 and PW 3 are bound to be present at the marriage ceremony and as such are natural witnesses.

10. Kamu in her evidence as PW 4 stated that her marriage with Sundaram took place on Sunday May 30, 1948 between 5 to 6 a.m. in Sundaram's house at Devi Street, Srirangam. At that time she was 19 and her husband was 30. Three days prior to marriage bridegroom's party consisting of Krishnan, his wife and Kuppammal Kamu (senior) came to the house of her. parents for Parisam ceremony. Silk sarees, 6 sovereigns of two rows gold chain, a pair of gold bangles weighing two sovereigns were given to her as Parisam. She further stated that on the next day she along with ten other relations went to Srirangam where the marriage was performed by Ayyangar Prohit. All the ceremonies of marriage and other details have been given by PW 4. She further stated that at the time of her marriage she was working as a teacher and she continued to work as such for about five years thereafter. She deposed that her husband permitted her to continue in service. She gave details of the posting of her husband at various places from 1948 onward. Nothing has been brought in the cross-examination to show that she is an untrustworthy witness. The High Court rejected her

testimony on the flimsy ground that she could not have continued in service up to 1953 after marrying Sundaram in 1948. We are of the view that Kamu has given plausible explanation for continuing in service after marriage. According to her she had taken a stipend during her training period which was to be repaid. Apart from that her salary was needed for the education of her brothers and sisters and for that reason her husband permitted her to continue in service till 1953.

11. We are of the view that the documentary and oral evidence produced by the appellant-plaintiff- Kamu proves the factum of her marriage to Sundaram in the year 1948. Even DWs 1 and 2, who are witnesses produced by Muthayya, admit in their evidence that from 1,953 to 1967 for 14 years Kamu lived With Sundaram and two daughters were born to her through Sundaram.

12. We, therefore, allow the appeal set aside the judgment of the High Court and decree the suit of the appellants in the following terms:

1. The appellants shall not be entitled to claim any share in lieu of the properties which have already been alienated by the respondents.
2. The appellants shall not be entitled to mesne profits or any income derived from the properties by the respondents prior to the date of this judgment.
3. The appellants-plaintiffs are entitled to 5/8th share in plaint A and B scheduled properties, They are not entitled to any share in C scheduled properties.
4. We grant decree for partition of plaint A and B scheduled properties excluding those already alienated and the allotment of 5/8th share in the remaining properties to the appellants-plaintiffs.
5. We further grant decree for accounting in respect of plaintiffs' share of income from plaint A and B scheduled properties from today onwards till the partition and delivery of the said properties to them. The appellants-plaintiffs shall be entitled to their share of income from the property from today onwards.

13. The appeal is allowed. The suit decreed in the above terms with costs throughout. We quantify the costs as Rs. 10,000/-. Appeal allowed.

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