

SUPREME COURT OF INDIA

Murugaiah

Vs.

Annathai

(D.P. Mohapatra and S. V. Patil JJ.)

18.09.2001

ORDER

1. Leave granted.
2. This appeal is directed against the judgment of the Madras High Court in civil miscellaneous second appeal No. 52 of 1997 in which the High Court set aside the judgment of the lower appellate court and restored the judgment of the trial court.
3. The respondent herein filed a petition under Section 9 of the *Hindu Marriage Act, 1955* seeking restitution of conjugal rights against the appellant. The said petition was registered as H.M.O.P. No. 64 of 1992 on the file of the subordinate judge, Tenkasi. The gist of the case pleaded by the respondent was that she and the appellant were well-known to each other. Indeed they were related to each other. They were both residents of village Kulasekaramangalam where they lived in houses opposite to each other. Between 1981 and 1983 the relationship became more intimate; they had sexual intercourse with each other as a result of which she became pregnant. She told the respondent about the development, he promised to marry her. Subsequently, when he tried to go back on his promise then she and her family members lodged a complaint before the local police. At the intervention of the sub-inspector of police, a meeting of the village panchayat was convened. Before the panchayat the appellant accepted his relationship with the respondent and reiterated his promise to marry her. In pursuance of the panchayat decision, the marriage was performed on 27th July, 1983 in the village temple by the appellant tying thali on her neck and both of them exchanging garlands. Thereafter, for a short time both of them lived as husband and wife. She went to her father's house for birth of the child. She gave birth to a male child on 13th October 1983. The appellant, neither came to see her and the child nor showed any interest in looking after them. In such compelling circumstances, she filed the application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights.
4. The case of the appellant on the other hand was one of the denial of the entire case pleaded by the respondent. He denied that he had any relationship or intimacy with the respondent; that he was in any way responsible for her pregnancy; that he had ever promised to marry her; and that there was any marriage ceremony performed in the village temple as alleged by her.

5. Both the parties led evidence, oral and documentary, before the trial court. The court on appreciation of the evidence accepted the case of the respondent and decreed the suit for restitution of conjugal rights.

6. On appeal by the respondent the first appellate court took a different view and held that the respondent had failed to establish her case of premarital relationship and marriage by tying of thali or exchange of garlands. The appellate court dismissed the suit.

7. In the second appeal filed by the respondent, the High Court, formulated two substantial questions of law which read as under:

“1) Whether the lower appellate court erred in law and misdirected itself in holding that the marriage between the petitioner and the respondent was not established merely because no state enactment provides compulsory registration as provided under Section 8(2) of the *Hindu Marriage Act, 1955*?

2) Whether the lower appellate court erred in law and misdirected itself in holding that the marriage between the petitioner and the respondent was not proved though the petitioner has established the factum of marriage as provided under Section 7(1)(c) of the *Hindu Marriage (Tamil Nadu Amendment) Act, 1967*?”

8. From the judgment it is clear that the High Court has re-assessed the evidence of PW1 (the appellant), PW2 (the village headman) and also the evidence of RW1 (the respondent). The court referred to the provisions of Section 7A of the Hindu Marriage Act which was introduced by Tamil Nadu Act No. 21 of 1967. Under the said provision certain forms of marriage prevalent in the State of Tamil Nadu have been recognised as valid for the purpose of the Act. The High Court came to the conclusion that the findings recorded by the trial court were more probable and acceptable and that the lower appellate court committed an error in rejecting the acceptable evidence placed by the respondent. On such findings the High Court set aside the judgment of the lower appellate court and restored the decision of the trial court.

9. Learned Counsel appearing for the parties have referred to the discussion in the judgments of the first appellate court and the High Court in support of their contentions.

10. On perusal of the judgment, it is clear that both the courts have taken note of the fact situation of the case, the oral and documentary evidence on record and also the contemporaneous relevant evidence which the parties failed to produce and drew certain inference from non-production of such evidence. Since we are of the view that for proper adjudication of the dispute raised in the case, the case should be remanded to the trial court for fresh consideration and disposal, we do not deem it proper to discuss in detail the merits of the contentions raised on behalf of the parties, since any observation made by us is likely to affect the case of one party or the other. Suffice it to say that the dispute raised in the case is one of relationship of the parties as husband and wife and also the paternity of the male

child. The matter is not only of importance to the parties in the case, it is of relevance for the society. Such a matter calls for careful and in-depth consideration of the evidence on record keeping in mind the sensitive nature of the disputes raised. Regarding the evidence placed on record, the lower appellate court and the High Court have pointed out in their judgments that relevant evidence, both oral and documentary, which were available have not been placed on record. Therefore, for a fair and proper adjudication of the dispute opportunity should be given to both the parties to lead further evidence.

11. In the result the appeal is allowed. The judgments of the trial court, the lower appellate court and the High Court are all set aside and the case is remitted to the trial court for fresh disposal in accordance with law after giving opportunity to the parties to lead further evidence, if so advised. About eighteen years have elapsed since the alleged marriage between the parties, the trial court will dispose of the case expeditiously within six months from the receipt of intimation of this order. Parties will bear their respective costs.