SUPREME COURT OF INDIA

Gullipilli Sowria Raj

Vs.

Bandaru Pavani @ Gullipili Pavani

C.A.No.2446 of 2005

(Altamas Kabir and Aftab Alam JJ.)

04.12.2008

JUDGMENT

Altamas Kabir, J.

1. The only question which falls for determination in this Civil Appeal by way of Special Leave is whether a marriage entered into by a Hindu with a Christian is valid under the provisions of the *Hindu Marriage Act, 1955*.

2. The appellant, who is a Roman Catholic Christian allegedly married the respondent, who is a Hindu, on 24.10.1996, in a temple only by exchange of `Thali' and in the absence of any representative from either side. Subsequently, the marriage was registered on 2.11.1996 under Section 8 of the *Hindu Marriage Act, 1955*, hereinafter referred to as the "1955 Act".

3. Soon thereafter, on 13.3.1997, the respondent- wife filed a petition before the Family Court at Vishakapatnam, being O.P. No.84 of 1997, under Section 12(1)(c) of 1955 Act, for a decree of nullity of the marriage entered into between the parties on 24.10.1996 on the grounds mentioned in the said petition.

4. The main ground for declaring the marriage to be a nullity was mainly misrepresentation by the appellant regarding his social status and that he was a Hindu by religion, although it transpired after the marriage that the appellant and his family members all professed the Christian faith. The Family Court dismissed the said petition against which an appeal was preferred by the respondent before the High Court, which allowed the appeal by its judgment and order dated 12.9.2002 upon holding that the marriage between a Hindu and a Christian under the 1955 Act is void ab initio and that the marriage was, therefore, a nullity.

5. A few months thereafter on 23.1.2003 the respondent married one Dr. Praveen. Thereafter, on 23.4.2003 the appellant filed a Special Leave Petition out of which the present appeal arises.

6. There is no dispute that at the time of the purported marriage between the appellant and the respondent the appellant was a Christian and continues to be so whereas the respondent was a Hindu and continues to be so. There is also no dispute that the marriage was alleged to have been performed under the Hindu Marriage Act, 1955, and was also registered under Section 8 thereof. As against theabove, a novel argument has been advanced on behalf of the appellant, the substance whereof that is the *Hindu Marriage Act, 1955* does not preclude a Hindu from marrying a person of some other faith. In order to assist the Court in regard to such a submission, the Court had requested Mr U .U. Lalit, learned Senior Advocate, to assist the Court in the matter.

7. Mr. Lalit firstly took us through the provisions of Section 5 of the 1955 Act which prescribes the conditions for a Hindu marriage. The opening words of Section 5 are as follows:

> "A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :..."

8. Mr. Lalit submitted that the use of the word `may' in the opening words of Section 5 seems to indicate that the conditions were not mandatory and that as a result, the said conditions would not be binding on the marriage performed between the appellant and the respondent.

9. Mr. Lalit then took us through the provisions of Section 11 of the 1955 Act, which deals with void marriages and indicates as follows:

> "11. Void Marriages: - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v), Section 5."

10. Mr. Lalit submitted that none of the conditions, as indicated in Section 11, apply to the facts of this case and as such the marriage between the appellant and the respondent could not be said to be a void marriage. According to Mr. Lalit, at best the marriage could be said to be a void able marriage and the High Court appears to have proceeded on an erroneous footing that the marriage was abs into void.

11. Adopting the line of submission advanced by Mr. Lalit, Mr. C. Mukund, learned counsel for the appellant, submitted that the Heading of Section 5 - `Conditions for a Hindu marriage' was a misnomer, having regard to the use of the expression `may' in the opening lines of the Section. Mr. Mukund submitted that the conditions indicated in Section 5 must be held to be optional and that Section 7 of the said Act where also the expression `may' has been used in Sub-section (1) must be understood to refer to a marriage and not the parties to the marriage. Mr. Mukund submitted that Section 11 of the Hindu Marriage Act, 1955, would, therefore, have an overriding effect over the provisions of Section 5 which, according to him, were optional. Mr. Mukund reiterated that the Hindu Marriage Act, 1955, does not

contemplate a valid marriage only between two Hindus, and urged that the High Court had erred in allowing the respondent's application under Section 12(1)(c) of the above Act on such misconception of the provisions thereof.

12. Mr.Y. Rajagopala Rao, learned advocate appearing for the respondent wife, submitted that it will first have to be decided whether the marriage performed between the parties was a valid Hindu marriage or not. According to Mr. Rao, the other questions would arise only thereafter. In this regard, Mr. Rao submitted that the Preamble to the Hindu Marriage Act, 1955, in unambiguous terms makes it clear that the Act was promulgated to amend and codify law relating to marriage amongst Hindus. He urged that the language of the Preamble leaves no room for doubt that the Act and its provisions would apply to Hindus only, as defined in Section 2,Sub-section (1)(c)whereof specifically excludes a person professing the Christian faith from the its ambit. Mr. Rao urged that each religious community in India had their own form of marriages which excluded members of other religious communities, though the Indian Marriage Act did recognize a marriage between a Christian and non-Christian to be valid, though under the provisions of the Special Marriage Act.

13. Mr. Rao also referred to Section 2 of the above Act which reads as follows:

> "2.-Application of Act- (1) This Act applies,-
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> (a) to any person who is a Hindu by religion in any of of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
>
> (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
>
> (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. Explanation.- The following personsare Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be,-
>
> (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
>
> (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist Jaina or Sikh by religion and who is brought up as a member of tribe, community, group or family to which such parents belongs or belonged; and
>
> (c) any person who is a convert or re-convert to the Hindus, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindus" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person whom this Act applies by virtue of the provisions contained in this section."

14. Reference was then made to Section 4 of the Act which, inter alia, provides that save as otherwise expressly provided in the Act any text Rule or interpretation of Hindu Law or any customs or usage as part of that law in force immediately before the commencement of the Act would cease to have effect with respect to any matter for which provision had been made in that Act. Mr. Rao pointed out that the said Section also provided that the *Hindu Marriage Act, 1955*, would override other laws in force immediately before the commencement of the *Hindu Marriage Act, 1955*, in so far it was inconsistent with any of the provisions of the 1955 Act.

15. With regard to the provisions of Section 5 of the Hindu Marriage Act, 1955, Mr. Rao submitted that it was clear from the wording thereof that the conditions indicated in the Section were to apply only in respect of a marriage between two Hindus and that a Hindu marriage could be solemnized between two Hindus only when the conditions set out in the provision contained there in had been fulfilled. According to Mr. Rao, the marriage between the parties would have to be categorized within the scope and ambit of Section 12 relating to voidable marriage since a void marriage under Section 11 of the Act had been defined to mean any marriage solemnized after the commencement of the Act if it contravenes any one of the conditions specified in clauses (i)(iv) and (v) of Section 5. Since the marriage of the parties did not fall within the said categories, the respondent had no option but to make an application under Section 12 (1)(c) that the marriage was a nullity on the ground that the appellant had been beguiled into the marriage by the appellant on fraudulent considerations, one of which was that he was a Hindu at the time of marriage. Mr. Rao submitted that since a valid marriage under the Hindu Marriage Act, 1955, could only be performed between two Hindus the marriage had been rightly declared to be a nullity by the High Court and its decision did not warrant any interference in this appeal.

16. Apart from the aforesaid question, another submission was advanced on behalf of the respondent to the effect that, after the decree passed in her favour declaring the marriage to be a nullity, she had remarried on 23.1.2003 i.e about 4 months after the decree declaring her marriage with the appellant to be nullity had been passed.

17. Various decisions were cited on behalf of both the parties with regard to this aspect of the matter which, in our view, is not really important for a decision on the legal question that has been raised in the appeal.

18. Although, an attempt has been made to establish that the Hindu Marriage Act, 1955, did not prohibit a valid Hindu marriage of a Hindu and Another professing a different faith, we are unable to agree with such submission in view of the definite scheme of the 1955 Act. 19.In order to appreciate the same, we may first refer to the Preamble to the Hindu Marriage Act, 1955 , which reads as follows:

> " An Act to amend and codify the law relating to marriage among Hindus ". (Emphasis added)

20. As submitted by Mr. Rao, the Preamble itself indicates that the Act was enacted to codify the law relating to marriage amongst Hindus. Section 2 of the Act which deals with application of the Act, and has been reproduced hereinabove, reinforces the said proposition.

21. Section 5 of the Act thereafter also makes it clear that a marriage may be solemnized between any two Hindus if the conditions contained in the said Section were fulfilled. The usage of the expression `May' in the opening line of the Section,in our view, does not make the provision of Section 5 optional. On the other hand, it in positive terms indicates that a marriage can be solemnized between two Hindus if the conditions indicated were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnized. The expression `may' used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnized according to the ceremonies indicated therein.

22. In the facts pleaded by the respondent in her application under Section 12(1)(c) of the 1955 Act and the admission of the appellant that he was and still is a Christian belonging to the Roman Catholic denomination, the marriage solemnized in accordance with Hindu customs was a nullity and its registration under Section 8 of the Act could not and/or did not validate the same. In our view, the High Court rightly allowed the appeal preferred by the respondent herein and the judgment and order of the High Court does not warrant any interference.

23. The other question raised regarding the subsequent marriage of the respondent is of little relevance once we have held that the marriage purported to have been performed between the appellant and the respondent on 24.10.1996 was a nullity. Hence, no decision is called for in that regard and we also make no observation in respect thereof.

24. The appeal is accordingly dismissed.

25. There will, however, be no order as to costs.

26. We place on record our appreciation of the assistance provided by Mr. Lalit to help us to arrive at a decision in this appeal.