Venkatacharyulu Vs. Rangacharyulu and anr.

LegalCrystal Citation : legalcrystal.com/780906

Court : Chennai

Decided On : Nov-18-1890

Reported in : (1891)ILR14Mad316

Judge : Muttusami Ayyar and ;Shephard, JJ.

Appellant : Venkatacharyulu

Respondent : Rangacharyulu and anr.

Judgement :

1. This is a second appeal from the decree of the District Judge of Kistna who dismissed the appellant's suit for an injunction restraining the respondents from marrying their daughter Venkatarangamma to any one else. The second respondent is the first respondent's wife, and their daughter Venkatarangamma is a child aged now nine years. In June 1884 the mother bestowed the girl in marriage on the appellant and the marriage ceremony was duly solemnized in Narasimhasvami temple at Mangalagiri. The father, however, was not present during the marriage nor had the mother his permission to marry their daughter to the appellant. There was an averment in his plaint that such permission was granted, but both the lower Courts have found that it is not proved. There was also some evidence in the case to show that the father was present when the girl first proceeded to the appellant's house after the marriage and what is commonly known as the grihapravesam ceremony was performed, but the District Munsif discredited the evidence and the Judge apparently concurred in his opinion. The respondents reside in the village of Srirangapuram and it appears that the father went on a visit to his disciples about June 1884 when the mother took the child to Mangalagiri and there married her to the appellant as stated above. The District Munsif considered that she acted as she did because she was probably not willing that the girl should be married to the boy named by her father's mother and that the appellant was a more suitable husband, and on this ground, he was of opinion that the marriage was not fraudulent. But the Judge referred to the evidence that the mother represented falsely to the officiating Brahman at Mangalagiri that she had her husband's permission and concluded from it that the marriage was a fraud upon the father. Upon these facts the question arising for decision is whether the marriage is one which ought to be recognized under the Hindu law.

2. There can be no doubt that a Hindu marriage is a religious ceremony. According to all the texts it is a samskaram or sacrament, the only one prescribed for a woman and one of the principal religious rites prescribed for purification of the soul. It is binding for life because the marriage rite completed by saptapadi or the walking of seven steps before the consecrated fire creates a religious tie, and a religious tie, when once created, cannot be untied. It is not a mere contract in which a consenting mind

is indispensable. The person married may be a minor or even of unsound mind, and yet, if the marriage rite is duly solemnized, there is a valid marriage.

3. In Sxmdaramayya, v. Bapirazu Second Appeal No. 566 of 1889, unreported a Divisional Bench of this Court observed:--' The Subordinate Judge has found that the marriage was valid according to the rites of the class to which the parties belonged, and though it is urged before us that the asura form of marriage is forbidden, we are referred to no authority for holding that a marriage once performed can be set aside on the ground that there was a contract to pay a price for the girl.' It was also held by the High Courts at Calcutta and Bombay that when the marriage rite was duly solemnized and there was no fraud or force, the doctrine of factum valet applied and the marriage was irrevocable--Brindabun Chandra Kurmokar v. Chndra Kurmokar I.L.R. Cal. 140 and Khushalohand Lalchand v. Bai Mani I.L.R. Bom. 247.

4. That such is the Hindu law is not denied for the respondents. It is indeed conceded for them that the marriage in the case before us could not be annulled if the girl were given away either by her father or with his consent, and the substantial question then for determination is whether a gift of the bride by the father or her proper legal guardian is of the essence of a Hindu marriage as a religious ceremony.

5. As a religious ceremony it becomes complete when the saptapadi is performed, and there are several Smrutis to that effect.

Manu says:

The relation of wife is created by the texts pronounced whan the girl is taken by the hand. Be it known that those texts end, according to the learned, with the texts prescribed for walking seven steps' (See Chap. VIII, 229)

Vasishta says:

In connection with the formation of the relation of husband and wife, agreement is first prescribed. Then taking by the hand is prescribed. It is said that mere agreement is defective, and that of the two, taking by the hand is indispensable.

Yamd says:

Not by the pouring of water nor by the words of gift is the relation of husband and wife formed, but it is formed by the rite of taking the bride by the hand and when they walk together the seventh step.

9. We may here mention that the marriage ritual prescribed for Brahmans and now in general use amongst them is what is known as the Brahma marriage, and this is the form customarily adopted even where the father accepts a price for the girl and the marriage is in substance of the 'asura' kind. The ritual, so far as it extends to saptapadi, may be divided into three parts--(1) the vagdanam or the promise to give; (2) the actual gift of the bride or kanyakadanam, and (3) the marriage rite which commences with taking the bride by the hand (panigrahanam) and ends with the seventh step taken around the consecrated fire (saptapadi). For our present purpose the vagdanam and the kanyakadanam may be treated as forming one essential part and the marriage rite as the other. It must be remembered that the ritual is prescribed for a minor or a child, for, according to Hindu law and custom, a Brahman

girl must be married before she attains her maturity, and, therefore, at a time when she is not in a position to choose a suitable husband for herself. Two principles, therefore, form together the groundwork of the marriage ceremony--(1) a natural or legal guardian acting in the interest of the girl with due regard to her welfare should choose a suitable husband for her, and (2) the choice should be consecrated by the marriage rite and thereby unalterably fixed.

10. Hence, two propositions of law may be taken to be established beyond controversy, viz., (1) where there is a gift by a legal guardian and the marriage rite is duly solemnized, the marriage is irrevocable, and (2) where the girl is abducted by fraud or force and married, and there is no gift either by a natural or legal guardian there is a fraud upon the policy of the religious ceremony and there is therefore no valid religious ceremony. In support of the second proposition we may refer to the dictum of NORMAN, J., in Aunjona Dasi v. I'rahlad Chandra Ghose 6 B.L.R. 243 In that case the plaintiff, the mother of the girl, sought to set aside her marriage alleging that when the girl visited her sister and was staying with her, the defendant, the sister's husband, forcibly carried the girl away from his house and married her without the mother's consent and without gift from any one. It may also be suggested in support of the dictum that what the public law stigmatizes as a crime cannot be accepted as the source of a legal relation. The third proposition of law which is material to the case before us is that when the mother of the girl acting as her natural guardian in view to her welfare and without fraud or force gives away the girl in marriage and the marriage rite is duly solemnized, the marriage is not to be set aside. This view is supported by authority and is sound in principle. As authority in its favour we may refer to several decided cases. The first case is that of Bai Ruliyat v. Jeychand Rewal 1 Morley's Digest, N.S., 181. In that case the marriage was contracted by the mother irregularly without the consent of the father, but it was held that the marriage was duly solemnized with the ceremonies of vagdan and saptapadi and, therefore, not liable to be set aside. It appears that the question was referred to the Sastries of Surat and of the Sudder Court and decided in accordance with their opinion.

11. The second case is that [Modhoosoodun Mookerjee v. Jadub Chunder Banerjee 3 W.R. 194], decided in 1865. The mother gave the girl in marriage during the father's absence to an inferior Brahman on receipt of Rs. 200 and the Court relying on the Vyavastha of a Pandit declined to set aside the marriage. Though the father was a Kulin Brahman, and had, as such, numerous wives and the mother had a greater control over her children than is ordinarily the case, yet the ground of decision was that though the consent of the legal guardian should doubtless have been obtained, yet its absence would not invalidate a marriage otherwise unobjectionable.

12. The third case is that of Brindabun Chandra Rurmokar v. Chundra Kurmokar I.L.R. 12 Cal. 140 decided in 1886 by the High Court at Calcutta. In that case the legal guardian was the paternal uncle and it was admitted that he had a right to dispose of the girl in marriage in preference to the mother. A suit for the custody of the girl was pending and an injunction restraining the mother from marrying the girl was also in force. Yet the mother gave away the girl in marriage and the marriage rite was duly solemnized. It was held by NORRIS and GHOSE, JJ., that the marriage rite being duly performed by the mother and natural guardian and there being no fraud nor force, the doctrine of factum valet prevailed and the absence of the legal guardian's consent did not invalidate the marriage.

13. The fourth case is that of Khushalchand Lalchand v. Bai Mani I.L.R. 11 Bom. 247 decided in 1886 by the Bombay High Court. In that case also the mother celebrated her daughter's marriage without the father's consent, though a suit instituted by the father was pending and though an injunction issued by the Court was in force. It appeared, however, that for about eight years prior to the marriage, the father had ceased to live with the mother and the daughter and neglected to take steps to see the girl married though she was 11 years old, that the mother informed him of her intention to marry the girl, and that the father instituted the suit rather to spite the mother than in the interest of the girl. The Court upheld the marriage, the learned Chief Justice reviewing all the authorities bearing on the subject and observing that what is ordinarily called a father's right to give, is rather a duty to be performed under the Hindu law in the interests of the girl.

14. The fifth case is Sundaramayya v. Bapirazu Second Appeal No. 566 of 1889, not reported decided by this Court. It is an authority for the position that a marriage once performed cannot be set aside. It differs, however, from the case before us in that the father had prior to the marriage approved of the then plaintiff as a husband for bis daughter, the disagreement between him and the mother consisting in that the latter accepted Rs. 400 as a price for the girl whilst the father demanded Rs. 600. It recognizes the principle that what Courts of Justice should consider is not so much whether the father gave the girl away as her legal guardian at the marriage as whether the mother's action was bond fide and substantially in the interests of the minor.

15. Moreover, several Smruti writers prescribe the gift of the daughter in marriage before maturity as the father's duty and not as his right. So Brahaspati enjoins the father to give the daughter in marriage before she menstruates and declares that, if he fails to do so, he is guilty of causing abortion. Narada and Yajnvalkya pronounce him guilty of child murder. Samvarta declares that a disgusting punishment is prescribed in the next world for this dereliction of duty on the part of the father. As regards the doctrine that a marriage rite once duly solemnized is not liable to be set aside, Narada says:--'Once is a partition ordained, once is a girl given in marriage, and once does a man say 'I give' (See Chap. XII 28 Jolly's Trans., p. 83). The author of the Smruti Chandrika forbids a second samskaram or marriage, for the kaliyug (See Chap. Ill, 18 Krishnasami Iyer's Trans. p. 45). The theory is that when a legal relation is once consecrated and confirmed by mantra or Vedic texts, it is permanently fixed. Hence it is when a boy is invested with the sacrificial thread and consecrated by Vedic texts as belonging to his fther's gotram, he is not eligible for adoption into a different gotram.

16. There is also another reason why, when the marriage rite is once duly solemnized, the marriage should not be set aside except on clear proof of fraud. The religious theory is that when an adoption or a marriage which is forbidden is consecrated by a Vedic text and the religious ceremony is thereby defiled a servile state supervenes, and not that the prior status remains untainted.

17. As regards adoption, the author of the Dattakamimansa says in Section IV, Solka 40, 'Should one be adopted on whom the ceremony of tonsure and other rites have been performed, a servile state ensues, not that of a son' (see also Sloka, 46 Stokes's Hindu law Books, p. 580). It has however been held by this Court that when an adoption cannot be upheld owing to a legal defect, the adopted boy does not forfeit his status as son in his natural family, and in the same way, it might be held that when

a marriage rite is set aside on the ground that it is forbidden by the very law which prescribes the rite, the girl's prior legal status remains without taint, the rite being defiled and being inefficacious on that ground. But the religious theory mentioned above and the social difficulty which may arise from the marriage being set aside is a legitimate ground for recognizing the doctrine of factum valet except in cases of clear fraud or force when the religious ceremony may be presumed to be defiled by fraud upon its policy.

18. Applying the foregoing principles to the case before us, we think the Judge is in error in setting aside the marriage on the ground that the mother falsely stated to the officiating Brahman that she had the father's permission and thereby committed a fraud upon him. The Judge acted probably on the policy of Lord Hardwicke's Act in England which was passed in a great measure to prevent the marriage of minors without the consent of their parents or guardians and which declares that the marriage of persons wilfully intermarried without license from a person having authority to grant the same (the grant of which is forbidden to minors without the consent of parents and guardians) is null and void. The officiating Brahman under Hindu law is hired for the occasion and is not a person clothed with a statutory authority to be exercised subject to the guardian's consent, and there is no analogy between the English Statue and the Hindu Law. Moreover, it has already been shown that the giving of a daughter in marriage is more a duty than a right, and in the case before us the District Munsif has found that the mother acted bond fide in the interest of her daughter and as her natural guardian desiring to provide her with a suitable husband. This finding, from which the District Judge does not apparently dissent, is, in our opinion, sufficient to validate the marriage.

19. We may add that the mother is also among the legal guardians, although her place is after the paternal kinsmen, and it has been held that she is entitled to be consulted by the paternal kinsmen in the choice of a bridegroom. During the marriage ceremony the mother pours water into the father's hand when he formally gives away his daughter in marriage. Thus, in religious theory, the gift of the girl is the joint act of both parents, and in this sense the mother's position is higher than that of other legal guardians.

20. We must reverse the decree of the District Judge and restore that of the District Munsif. The respondents must pay the appellant's costs here and in the lower Appellate Court.