2024:KER:3496

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

MAT.APPEAL NO. 813 OF 2017

OP 606/2014 OF FAMILY COURT, KANNUR

APPELLANTS/RESPONDENTS

1 T.REMA
AGED 69 YEARS, W/O. LATE RAMAKRISHNAN NAMBIAR, SWAPNAM, JAI JAWAN ROAD, P.O PALLIKKUNNU, KANNUR DISTRICT.

2 T. KRISHNAKUMAR
AGED 43 YEARS, S/O. REMA T, SWAPNAM, JAI JAWAN ROAD, P.O PALLIKKUNNU, KANNUR DISTRICT.

3 T.JAYAKRISHNAN
AGED 42 YEARS, S/O. REMA T, SWAPNAM, JAI JAWAN ROAD, P.O PALLIKKUNNU, KANNUR DISTRICT.

4 KRISHNA MOHAN
AGED 41 YEARS, S/O. REMA T, SWAPNAM, JAI JAWAN ROAD, P.O PALLIKKUNNU, KANNUR DISTRICT.

BY ADVS.
SRI.V.R.KESAVA KAIMAL
SMT.C.DEVIKA RANI KAIMAL
SMT.C.S.RAJANI

RESPONDENTS/PETITIONERS

1 A.K.RADHAMANI
AGED 74 YEARS, RESIDING AT LAKSHMIPURAM, KALLYAD AMSOM, DESOM P.O, KALLYAD, TALIPARAMBA TALUK, KANNUR DISTRICT, 670 593.

2 A.K.RAJEEVAN
AGED 49 YEARS, RESIDING AT LAKSHMIPURAM, KALLYAD AMSOM, DESOM P.O, KALLYAD, TALIPARAMBA TALUK, KANNUR DISTRICT, 670 593.

BY ADV SRI.K.P.HAREENDRAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 3.1.2024, THE COURT ON 18.01.2024 DELIVERED THE FOLLOWING:

C.R.

ANU SIVARAMAN & C.PRATHEEP KUMAR, JJ.

Mat.Appeal No.813 of 2017

Dated : 18th January, 2024

JUDGMENT

C.Pratheep Kumar, J.

1. Two old women are fighting against each other in this appeal, claiming the status of the legally wedded wife of deceased K.T.Ramakrishnan Nambiar. Ramakrishnan Nambiar, who was working as a Village Officer, died on 24.9.2012. According to the 1st respondent, Ramakrishnan Nambiar married her on 27.4.1966 as per the religious rites and ceremonies and the 2nd respondent is the only son born in that wedlock. On the other hand, the 1st appellant claims that late Ramakrishnan Nambiar married her on 28.3.1970 as per the customary rites and appellants 2 to 4 are the children born in that wedlock. After the death of Ramakrishnan Nambiar, the respondents applied for legal heirship certificate before the Revenue Officials for claiming family pension. Since the appellants raised objection, they approached the Family Court, Kannur, for a declaration that the 1st respondent

A.K.Radhamani is the legally wedded wife of K.T.Ramakrishnan Nambiar and that the 2nd respondent A.K.Rajeevan is the son born in that wedlock. As per the impugned judgment dated 15.5.2017, the Family Court allowed the claim. Aggrieved by the above judgment, the appellants preferred this appeal.

2. A preliminary objection was raised that the OP for declaration before the Family Court without any claim on marital relationship is not maintainable. For reaching the conclusion, the Family court mainly relied upon the oral testimonies of PWs 1 to 7 and the documentary evidence Exts.A1 to A15 and X1. The trial Court further found that the subsequent marriage between K.T.Ramakrishnan Nambiar and the 1st appellant during the subsistence of the earlier marriage with the 1st respondent is hit by Section 11 of the Hindu Marriage Act.

3. It was contended by the learned counsel for the appellants relying upon various precedents that late K.T.Ramakrishnan Nambiar lived along with the 1st appellant for more than 40 years and hence the long cohabitation between them as husband and wife along with the recognition of K.T.Ramakrishnan Nambiar that the 1st appellant is his wife, give rise to a presumption of valid marriage in favour of the appellants. Further it was contended that absence of 'Kanyadan' ceremony in the marriage

between the 1st respondent and Ramakrishnan Nambiar fatally affects the validity of their marriage. On the other hand, according to the learned counsel for the respondents, since there is a valid marriage between the 1st respondent and late Ramakrishnan Nambiar, even if there is cohabitation between the 1st appellant and Ramakrishnan Nambiar, the same will not confer any presumption of valid marriage between them.

4. Now the points that arise for consideration are the following :

   (i) Whether there is any merit in the contention that the OP is not maintainable before the Family Court ?

   (ii) Whether the finding of the Family Court that the 1st respondent is the lawfully wedded wife of K.T.Ramakrishnan Nambiar and the 2nd respondent is the son born in that wedlock is correct ?

   (iii) Whether cohabitation between a man and woman how ever long the same may be, during the existence of another valid marriage, acquires the character of a valid marriage ?

5. Heard both sides.

6. Point (i) – The learned counsel for the appellants would content that this OP is not maintainable before the Family Court as declaration regarding the legitimacy was claimed without any claim on marital relationship. He has also relied upon the decision of a Division Bench of this court in

Bharat Kumar v. Selma Mini, 2007 (1) KLT 945, in support of his argument. In the above decision, the question that arose for consideration was whether paternity of a child is an issue to be considered by the Family Court under Section 7(1)(e) of the Family Courts Act, 1984, without a matrimonial cause. In the above case, a declaration was sought for declaring legitimacy of a child born in an extra marital relationship. However, in the instant case, the specific case of the 1st respondent is that she is the legally wedded wife of K.T.Ramakrishnan Nambiar and the 2nd respondent is the only son born in that wedlock. Therefore the above decision has no application in this case.

7. As per Explanation (b) to Section 7(1) of the Family Courts Act, 1984, the Family Court has jurisdiction to entertain a Suit or proceedings for a declaration as to the validity of a marriage or as to the matrimonial status of any person. Explanation (e) to Section 7(1) further states that a Suit or proceeding for a declaration as to the legitimacy of a person also comes within the jurisdiction of the Family Court. The relief sought for in this OP clearly comes within the Explanation (b) and (e) referred above and as such, it is to be held that this OP is perfectly maintainable. Therefore the finding of the Family Court that the Suit is maintainable

is justified. Point No.1 answered accordingly.

8. Point No. (ii) - Relying upon the evidence of PW1 to 3 and Exts.A1 to A15 and X1 documents, the Family Court categorically found that late Ramakrishnan Nambiar married the 1st respondent on 27.4.1966 as per the customary rites prevailing among the community. At the time of evidence, the 1st respondent as PW1, the brother of late Ramakrishnan Nambiar as PW2 as well as PW3, a close relative of PWs1 and 2 categorically deposed about the details of the ceremonies conducted in connection with the marriage. From their evidence, it is also revealed that on the very same day, the marriage of PW2 was also held, immediately after the marriage of Ramakrishnan Nambiar and 1st respondent at Kadalayi Sreekrishna Temple. As part of the marriage ceremony, the bride and bride-groom garlanded Thulasi mala given from the Temple, Ramakrishnan Nambiar presented a Sari to the 1st respondent and rings were also exchanged. From the evidence of PW1 to 3 it is also revealed that after the marriage, Ramakrishnan Nambiar and 1st respondent lived together as husband and wife and the 2nd respondent was born in that wedlock. As held by the Family Court, though PWs1 to 3 were cross-examined in detail, nothing material could be brought out to discredit their oral testimonies.

9. Ext.A1 series, A2 and A3 photographs were taken by PW3, a relative of Ramakrishnan Nambiar and the 1st respondent. It is true that the negatives of the above photographs were not produced in evidence. In this context it is to be noted that those photographs are of the year 1966. PW3 who had taken those photographs is not a professional photographer, but only a relative of the parties to the marriage. In the above circumstances, non-production of the negatives is not fatal to the evidentiary value of those photographs. As observed by the learned Family Court we do not find any reason to suspect the evidence of PW3 as well as Ext.A1 series, A2 and A3 photographs which substantiate the oral testimonies of PW1 to 3.

10. In Ext.A4 extract of register of birth of the 2nd respondent, Ext.A5 birth certificate of the 2nd respondent, Ext.A6 copy of application for admission of the 2nd respondent in the School, Ext.A7 copy of age declaration and Ext.A8 extract of admission register of the 2nd respondent deceased Ramakrishnan Nambiar himself declared that he is the father of the 2nd respondent. In Ext.A9 SSLC book of the 2nd respondent, Ramakrishnan Nambiar is shown as his father. From Ext.A10 statement of Ramakrishnan Nambiar, Ext.A11 and A12 election ID cards of respondents 1 and 2, Ext.A13 death certificate of

Ramakrishnan Nambiar, Ext.A15 report of Village Officer and Ext.X1 file relating to Land Board proceedings also the relationship between Ramakrishnan Nambiar and respondents 1 and 2 can be seen.

11. It was argued by the learned counsel for the appellants that during the life time of Ramakrishnan Nambiar, the respondents have not raised any claim and as such, the petition filed after his death is not maintainable. As argued by the learned counsel for the respondents, during the life time of Ramakrishnan Nambiar he had looked after and maintained the respondents and as such, during his life time, they had no grievance against him. After the death of Ramakrishnan Nambiar, when the respondents approached the Revenue officials for legal heirship certificate to claim family pension, the appellants raised objection and only at that time, there arose a cause of action for them to approach the Family Court. In the above circumstance, the respondents cannot be found fault with for not approaching the Family Court during the life time of Ramakrishnan Nambiar.

12. Referring to Section 7 of the Hindu Marriage Act and relying upon certain precedents, the learned counsel for the appellants would argue that mere exchange of garlands is not sufficient ceremony for completing a valid marriage. The absence of Kanyadan, namely

entrusting the hand of bride to the bride-groom by the father of the bride was mainly relied upon by the learned counsel in support of his above argument. It is true that during the cross-examination of PW3, it was revealed that no such ceremony was held at the time of marriage. On the other hand, according to the learned counsel for the respondents, the essential customary ceremonies prevailing among Hindu-Nambiar community was pleaded in the petition and it was not denied by the appellant. Those ceremonies were held in the instant case and as such, the absence of Kanyadan is not vital to the validity of the marriage. In the impugned judgment, the learned trial Court Judge also found that the pleadings with regard to the requirements to constitute valid marriage prevailing among Nambiar community as pleaded in the OP was not denied by the appellants and as such, now the appellants cannot take a contention that Kanyadanm is also an essential part of the customary ceremonies to constitute a valid Hindu marriage.

13. It was argued by the learned counsel for the appellants that the marriage between the 1st appellant and Ramakrishnan Nambiar was registered as per Ext.B3 while the marriage between the 1st respondent and Ramakrishnan Nambiar was not registered and therefore, more weightage is to be given to the marriage which is registered. However,

Ext.B3 is not a certificate issued by any competent authority, but issued from Chirackal Kovilakam Devaswom on 29.12.2011. The respondents seriously disputed the genuineness of Ext.B3 and in spite of that, the original register relied upon for preparing Ext.B3 was not produced in evidence. In the above circumstances, much reliance cannot be placed on Ext.B3.

14. At the same time, from the evidence of RW1 to 5 and the documents produced by the appellants, it can be safely concluded that on 28.3.1970 during the subsistence of the marriage with the 1st respondent, Ramakrishnan Nambiar married the 1st appellant also. From the above evidence, it is also revealed that during most of the period from 28.3.1970 till his death on 24.9.2012, Ramakrishnan Nambiar lived along with the 1st appellant and in that relationship, appellants 2 to 4 were born. Long cohabitation between Ramakrishnan Nambiar and the 1st appellant for more than 40 years was relied upon by the learned counsel for the appellants to substantiate his argument that a valid marriage can be presumed from the above conduct. He has also relied upon Ext.B22 Will executed by Ramakrishnan Nambiar on 21.5.2009 in which the 1st appellant is shown as his wife.

15. The learned counsel has also relied upon the decisions in **Leelamma v.**

Radhakrishnan, 2005 (2) KLT 212, Jayachandran v Valsala, 2016 (2) KLT 81, Reema Aggarwal v. Anupam, 2004 (2) KLT 822 (SC), Gokal Chand v. Parvin Kumari, 1952 KHC 333, Kunhavulla v. Radha Amma 2001 (1) KLT 336, Jinia Keotin and Others v. Kumar Sitaram Manjhi and Others, (2003) 1 SCC 730, Jisha v. Dileep , 2013 (2) KLT SN 63 in support of his arguments.

16. In the case in **Leelamma** (supra) a Single Bench of this Court held that :

> "*.....In a case where the alleged second marriage is disputed, long co-habitation as man and wife, even if true, or the description of the plaintiff as the wife of Sanku Kumaran in the ration card, votes list, or by the local people cannot come to the rescue of the plaintiff to contend for the position that a* valid marriage has to be presumed."

17. In **Reema Aggarwal's** case (supra) the Hon'ble Supreme Court held that the offence under Section 498A IPC applies even in a case where the marriage is not valid. Since the above decision relates to requisites to constitute the offence punishable under Section 498A IPC, it is not applicable to the facts of the present case which is dealing with the marital status of a woman and the paternity of the child born in that wedlock.

18. In the decision in **Jinia Keotin** (supra) the question involved was the right of children born of void or voidable marriage to inherit ancestral coparcenary property. Such an issue is not involved in the present case and as such the above decision also does not apply in this case.

19. In **Jisha's** case (supra), a Single Judge of this Court held that mere exchange of garlands or taking one or two steps alone are not sufficient for solemnization of a valid marriage. However in this case, there is not only exchange of garlands but exchange of rings and giving of Sari by the bride-groom to the bride. Therefore, the above decision does not apply to the facts of this case.

20. At the time of evidence, the 1st appellant admitted that she was never accepted by the family members of late Ramakrishnan Nambiar and that she never went to the Tharawad house of Ramakrishnan Nambiar. The absence of the name of the 1st appellant in the service records of Ramakrishnan Nambiar, appointment of the 2nd appellant as employees in Mannanam Temple wherein Ramakrishnan Nambiar was a trustee board member were also considered by the learned trial court Judge as circumstances probabilising the conclusion that the 1st respondent is the lawfully wedded wife of Ramakrishnan Nambiar and the 2nd respondent is the son born in that wedlock. In the light of the oral testimonies of

PW1 to 7 and Exts.A1 to A15 and Ext.X1 and the above circumstances, the trial Judge was perfectly justified in holding that the 1st respondent is the lawfully wedded wife of late Ramakrishnan Nambiar and the 2nd respondent is the son born in that wedlock. Therefore, point No.(ii) is liable to be answered in the affirmative.

21. Point No.(iii) – Another contention raised by the learned counsel for the appellants is that late Ramakrishnan Nambiar cohabited along with the 1st appellant for more than 40 years till his death and begotten appellants 2 to 4. Therefore, according to him presumption of a valid marriage is available in favour of the 1st appellant that she is the lawful wife of late Ramakrishnan Nambiar. From the evidence of RWs 1 to 4 and from Exts.B1 to B22, it can be seen that certain ceremonies in the nature of marriage were held between late Ramakrishnan Nambiar and the 1st appellant on 28.3.1970. It can also be seen that the 1st appellant and Ramakrishnan Nambiar had cohabited together and begotten appellants 2 to 4. However, it is to be noted that even if those ceremonies were held and Ramakrishnan Nambiar along with the 1st appellant lived together and begotten appellants 2 to 4 it was during the subsistence of the marriage between Ramakrishnan Nambiar and the 1st respondent. Therefore the crucial question is whether cohabitation between a man

and a woman for more than 40 years during the subsistence of the previous marriage of one of them acquires the status of a valid marriage.

22. It is well settled that continuous cohabitation for a number of years may raise the presumption of marriage. However, the above presumption is not an irrebuttable one. In the decision in **Gokal Chand** (supra), the Hon'ble Supreme Court observed that :

> *".....But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the Court cannot ignore them."*

23. In the instant case, as we have already noted above, as early as on 27.4.1966 late Ramakrishnan Nambiar married the 1st respondent as per the customary rites and ceremonies. It was only thereafter, on 28.3.1970 he alleged to have married the 1st appellant and started cohabitation along with her. The appellants have no case that when Ramakrishnan Nambiar married the 1st appellant, his marriage with the 1st respondent was dissolved lawfully. On the other hand, the contention taken by the appellants is only to the effect that there was no marriage between Ramakrishnan Nambiar and the 1st respondent. Since from the evidence on record it is proved that on 27.4.1966, Ramakrishnan Nambiar married

the 1st respondent and during the subsistence of the above marriage, he alleged to have married the 1st appellant, the second marriage with the 1st appellant is void in view of Section 5(i) r/w Section 11 of the Hindu Marriage Act.

24. In **Kunhavulla** (supra) relied upon by the learned counsel for the appellants also, a similar dispute arose for consideration. In the above decision, marriage between Kunjiraman Nambiar and 1st plaintiff was solemnized when his first wife, namely the 2nd defendant was alive. In the above factual situation, this court held that the marriage of Kunjiraman Nambiar with the 1st plaintiff is void.

25. In the light of the above discussions, we are of the considered view that cohabitation between a man and woman, however long it may be, the same will not acquire the character of a valid marriage, if it is during the subsistence of another marriage. Point No.(iii) answered accordingly.

26. In the decision in **Jayachandran** (supra) relied upon by the learned counsel for the appellants, a Division bench of this Court held that in order to get a relief of declaration of annulment or divorce, the factum of marriage is to be proved by the petitioner. In this case it is well established that the 1st respondent is the lawfully wedded wife of late Ramakrishnan Nambiar and also that the 2nd respondent is the child born

in that wedlock. It is also revealed that the marriage of the 1st appellant with Ramakrishnan Nambiar is void. Therefore, in the light of the above findings on point Nos.(i) to (iii), it is to be held that there is absolutely no irregularity or illegality in the impugned judgment passed by the learned Judge of the Family Court so as to call for any interference. Accordingly, this appeal is liable to be dismissed.

In the result, the appeal stands dismissed.

Sd/-

Anu Sivaraman, Judge

Sd/-

C.Pratheep Kumar, Judge

Mrcs/4.1.2024