

MOOT COURT PROBLEM -2

IN THE COURT OF THE SUB-JUDGE OF TIRUPATI

Suseela Petitioner

Vs.

Madhav ... Respondent

(Submission on behalf of the Petitioner)

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FACTS OF THE CASE : Suseela filed an application for restitution as conjugal rights under Hindu Marriage Act in married one Madhav in temple near Chadragiri on 14th March, 92 by exchange of garlands. She further stated that she joined her husband and her mother-in-law was ill treating her for reason that their marriage was not an arranged marriage and the marriage performed was not a marriage at all it is her further case that she and her husband went to Tirumala that they had undergone all marriage ceremonies on 3rd October, 92 in Tirumala Purohit Sangam hall and thus the marriage was solemnized. The husband who is under the thumb of his mother deserted her in March 93 and she has been living separately ever since.

The contention of Madhav is that he came into contact with Suseela as she was introduced to him in a function by friend where accidentally a photograph of both of them was taken. He did not marry by exchange of garlands as alleged by her on 14-3-92 and he married his maternal uncle's daughter on 6-6-92. He further alleges that taking advantage of his state of drunkenness Suseela took him to Tirumala and he was not knowing as to what was going on 3rd October 92. He says that Suseela is a Christian and he had produced an affidavit (in which her husband's name was also mentioned) signed by her and attested by a notary to the effect that she is a Christian and the affidavit was needed for securing employment. Madhav had also got hold of a birth certificate where in it is stated that Suseela gave birth to a male child 3 years prior 14-3-92 and the husband's name is mentioned as Joseph C. Prato. Madhav therefore contends that his marriage at all there is one with Suseela is not a valid marriage and she is not entitled for Restitution of Conjugal rights.

ISSUES PRESENTED

- 1) Whether the marriage of the petitioner and respondent was solemnized under Hindu marriage Act or not ?
- 2) Whether the petitioner has entitled for Restitution of conjugal rights or not?

SUMMARY OF ARGUMENTS

- 1) The marriage of petitioner and Respondent was solemnized under Hindu Marriage Act.
- 2) Petitioner has entitled for Restitution of conjugal rights.

ISSUES OF THE CASE

- 1) Whether the marriage of the petitioner and respondent was solemnized under Hindu Marriage Act or not.

Firstly the marriage of Petitioner and Respondent was solemnized in the form of Gandharva which is recognized by Hindu law. According to Gandharva Viveham the bridegroom and bride will exchange garlands then the marriage is said to be solemnized. Petitioner married respondent in a temple near Chandragiri on 14th March 1992 exchange of garlands and staying with her respondent and her mother-in-law.

For this I rely upon

Deivain Achi

Vs.

Chidambaram Chettiar (AIR 1954 Madras 657)

The division bench of Madras High Court held that “to constitute valid marriage under Hindu law”. According to sastras, mutual consent or agreement between the bride and the bridegroom in the Gandharva form is essential.

The Division Bench of Madras High Court held that “to constitute valid marriage under Hindu law”. According to sastras mutual consent or agreement between the bride and the bridegroom in the Gandharva form is essential.

Kamani Devi Vs. Kameswar Sing (AIR 1946 patna 316)

It was held that no prescribed ceremony is necessary to constitute marriage.

In the instant case after performing the marriage on 14-3-92 by exchange of garlands again after few months the petitioner and respondent went to Tirumala and undergone all marriage ceremonies on 3rd October 92 in Tirumala Purohita Sangam Hall. Thus the marriage was solemnized. As Suseela living with her husband and mother-in-law was ill-treating, Because petitioner’s marriage with respondent was not arranged one and the marriage performed was not a marriage at all. That’s why petitioner and her respondent went to Tirumala and had undergone all marriage ceremonies on 3rd October 1992 in Tirumala Purohita Sangam.

Drinking liquor on Tirumala hills was under prohibition totally even long before 3-10-92. It is also observed that during the time of marriage he was in normal stage and performed all marriage ceremonies himself. Ex. : Soptapadi, Mangala Sutradanam etc. That to purohit who attends that marriage is an authorized person of T.T.D. So we can say that he was not in a drunken state.

Though petitioner is Christian, she converted to Hinduism and the marriage is solemnized in accordance with Hindu marriage. U/s.125 Cr.P.C. the marriage between

Christian and Hindu performed as per the Hindu rites with the full consent of both parties is valid for the purpose of claiming maintenance. Therefore petitioner has every right to claim for Restitution of conjugal rights.

Another contention of respondent is that he married his maternal uncle's daughter on 6-6-92. But the marriage of respondent and petitioner is performed in March, 92 in a temple near Chandragiri and again in Tirumala Purohita Sangam Hall on 3rd Oct. 92. According to Sec. 5(i) of Hindu marriage Act 1955 that neither party should have a living spouse at the time of marriage. Sec. 11 makes a bigamous marriage the second wife has no status of wife. So the second marriage of the respondent with his maternal uncle's daughter is invalid and his second wife has no status of wife. As petitioner having the status of wife has every right to Restitution of Conjugal rights.

Respondent's contention is that the petitioner is a Christian and having husband named Joseph C Pratap and a male child. The affidavit produced by the respondent is false one. She was unmarried, when she married the respondent and she has no children at all.

2) Whether the petitioner is entitled to Restitution of conjugal rights or not ?

The petitioner is entitled for Restitution of conjugal rights.

Sec.9 of Hindu marriage Act deals with Restitution of conjugal rights without reasonable excuse withdrawn from the society of the other, the aggrieved party may apply by petition to the District court for restitution of conjugal rights and the courts. On being satisfied of truth of the statement made in such petition and that there is no legal ground why the application should not be granted may decree restitution of conjugal rights accordingly.

For restitution the following three conditions must be satisfied.

- i) The respondent has withdrawn from the society of the petitioner without any reasonable cause.
- ii) The court is satisfied about the truth of the statement made in such a petition and
- iii) there is no legal ground why the relief should not be granted.

After the performance of marriage between respondent and petitioner they lived together with respondent's mother. Respondent who is under the thumb of his mother deserted the petitioner in March 93 and she has been living separately ever since.

So there is no reasonable excuse and the first condition is satisfied.

In the other conditions the statements made by the petitioner are true and the respondent is her legally wedded husband. In the case of restitution the petitioner must prove the validity of the marriage between the parties.

In the present case the petitioner proved that the marriage between the petitioner and respondent is valid and there is a legal wed-lock exists between the parties. If all the conditions for granting the decree for restitution of conjugal rights are satisfied then the court grant Restitution of conjugal rights to the petitioner.

For this I rely upon

Harvinder Kaur Vs. Harmander Sing (AIR 1984 Delhi 66)

In this case also the husband was the petitioner for restoration of conjugal rights, His wife apposed the petition. The constitutionality of Sec.9 was upheld by the Delhi High court.

This decision was supported by Supreme Court in the case of.

Saraj Rani Vs. Sudarshan Kumar (AIR 1984 SC 1562)

It was held that the conditions for restitution of conjugal rights were proved and the decree of restitution of conjugal rights was granted in the favour of wife.

In the present case all the conditions for granting restitution of conjugal rights are satisfied and so the petitioner is very much entitled for the decree of restitution of conjugal rights.

Conclusion : Hence from above all my arguments we can come to the conclusion that the marriage performed between the petitioner and respondent is duly solemnized and is valed under Hindu marriage Act 1955. The grounds for granting the decree of Restitution of conjugal rights are satisfied and so my client i.e., petitioner in the present case is entitled for the decree of Restitution of conjugal rights.

PRAYER:-My Humble prayer is in the Hon'ble court you may know that position of a woman deserted by her husband in this society. Therefore it is prayed to this Hon'ble court to grant Restitution of conjugal rights to my client.