A MAHAMMADUNNI'S SON KAPPATTA KATHOKANDATH BAVA

v.

KUNHOOSA'S SON AMPALATH VEETTIL KUNNATHODATH MAHAMMADUNNI & ORS.

B

December 2, 1975

[A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA AND P. N. SHINGHAL, JJ.]

Partition suit—Proof of marriage—Insanity—Lucid interval—A person adjudged insane whether continues to be so till proved to the contrary.

C The plaintiff who is son of defendant No. 3's mother's brother filed a suit for partition of properties which belonged to the mother and father of defendant No. 3. Defendant Nos. 1 and 2 are the sons of brothers of defendant No. 3's mother. Defendant No. 4 is the son of defendant No. 3's father's brother. Defendant No. 3 died during the pendency of the suit. Thereafter, defendant No. 1 filed his additional written statement and claimed half share in the property of defendant No. 3 on the ground that defendant No. 3 married defendant No. 1 after the suit was instituted.

D The Trial Court allotted different shares to various defendants in the properties left by defendants No. 3's mother and father which are no longer in dispute. The trial Court found that defendant No. 4 alone was entitled to the share of defendant No. 3 on the ground that the marriage of defendant No. 3 with defendant No. 1 was not proved. The trial Court also found that defendant No. 3 was mentally unsound to enter into any marriage.

On appeal, the High Court held that defendant No. 1 was married to defendant No. 3 and defendant No. 3 was in a lucid interval at the time of E marriage.

On an appeal by certificate to this Court, the counsel for the appellant contended : (1) that the finding of the High Court both with regard to the fact of marriage and that the marriage took place during a lucid interval were erroneous; (2) that defendant No. 3 was not a sane person as is clear first from an order declaring defendant No. 3 to be a person of unsound mind, whereby defendant No. 4 was appointed guardian of the property of defendant No. 3 and defendant No. 1 was appointed guardian of the person of defendant No. 3. F Secondly the application of defendant No. 3 to be declared herself as a person of sound mind was rejected by the District Judge. Thirdly, in the present suit defendant No. 3 was impleaded as a person of unsound mind; and (3) that once a person is adjudged insane it is presumed that state of unsoundness would continue until proved to the contrary.

Dismissing the appeal,

G HELD : (1) The documents relied on by the appellant do not rule out lucid interval at the time of marriage. The High Court relied on the evidence of D.W. 4, a teacher, who attended the marriage. He deposed that defendant No. 3 gave her consent to the marriage and was in her lucid interval at that time. The High Court rightly found that defendant No. 3 gave her consent to the marriage and was in her lucid interval. The conclusion of the High Court on both the questions is based on evidence and is correct. [860E-H]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1268 of 1970.

From the Judgment and order dated 17th July 1969 of the Kerala High Court in A.S. No. 217 of 1964.

T. S. Krishnamoorthy Iyer, N. Sudhakaran and P. K. Pillai for the Appellant. A

A. S. Nambiyar for Respondent No. 2.

(Appeal set down ex-parte against respondents 1 and 5—21 Respondent 4 expired : Name of respondent 3 deleted).

The Judgment of the Court was delivered by B

RAY, C.J. This is an appeal by certificate from the judgment dated 17 July 1969 of the High Court of Kerala.

The question in this appeal is whether defendants No. 1 and 4 are each entitled to share in the property allotted to defendant No. 3 in a partition decree. Defendant No. 4 is the appellant. C

This appeal arises out of a suit instituted on 19 November, 1957 for partition of properties. Properties mentioned in Schedule A and B to the plaint belonged to the mother of defendant No. 3. Properties mentioned in Schedule C to the plaint were joint properties of the father and the mother of defendant No. 3.

D

The plaintiff and defendant No. 2 are the sons of one of the brothers of the mother of defendant No. 3. Defendant No. 1 is the son of another brother of the mother of defendant No. 3. Defendant No. 4 is the son of defendant No. 3's father's brother.

Defendant No. 3 died during the pendency of the suit. Thereafter defendant No. 1 filed his additional written statement and claimed half share in the property of defendant No. 3 on the ground that defendant No. 1 had married defendant No. 3 on 30 August, 1959. E

The Trial Court allotted to defendant No. 3 3/6th share in properties mentioned in Schedules A and B to the plaint. The plaintiff and Defendant No. 1 and defendant No. 2 were each given 1/6th share in properties in Schedules A and B to the plaint. With regard to Schedule C properties the plaintiff and defendant No. 1 and defendant No. 2 were each given 9/96th share and defendant No. 3 was given 51/96th share and defendant No. 4 was given 18/96th share. F

The Trial Court found that defendant No. 4 was alone entitled to the share of defendant No. 3 on the ground that marriage of defendant No. 3 with defendant No. 1 was not proved. The Trial Court also found that defendant No. 3 was mentally unsound to enter into any marriage. G

Defendant No. 1 preferred an appeal. The High Court set aside the judgment of the Trial Court and held that defendant No. 1 was married to defendant No. 3 and defendant No. 3 was in a lucid interval at the time of marriage.

Counsel for the appellant defendant No. 4 impeached the finding of the High Court both with regard to the fact of marriage and the finding that defendant No. 3 was married in a lucid interval. H

A Defendant No. 4 relied on three documents in support of the submission that defendant No. 3 was not a sane person to enter into marriage with defendant No. 1. The first document is Exhibit B-34 which is an order dated 8 November, 1958 declaring defendant No. 3 to be a person of unsound mind. In that order defendant No. 4 was appointed guardian of the property of defendant No. 3 and defendant No. 1 was appointed guardian of the person of defendant No. 3. The B second document is Exhibit B-8 dated 7 September 1959. The appellant submitted that on 7 September 1959 defendant No. 3 wanted to get herself declared as a person of sound mind. By an order dated 5 February 1960 being Exhibit B-31 the District Judge dismissed the application of defendant No. 3. The third document on which the appellant relied is the suit in this appeal where defendant No. 3 on 19 November, 1957 was impleaded as a person of unsound mind.

C

The appellant contended that though Exhibit B-34, namely, order dated 8 November 1958 declaring defendant No. 3 as a person of unsound mind was not a judgment *in rem* but it was a judgment interparties and it would, therefore, be admissible under sections 11 and 13 of the Evidence Act. The appellant also contended relying on the decision in *Amanchi Seshamma* v. *Amanchi Padmanabha Rao*(1) D that once a person is adjudged insane it is presumed that state of unsoundness will continue until proved to the contrary.

Counsel for the appellant therefore contended that the conclusion of the High Court that defendant No. 3 was in a lucid interval at the time of marriage was against the overwhelming documentary evidence.

E The documents relied on by the appellant do not rule out lucid interval at the time of marriage on 30 August 1959. The High Court relied on the evidence of D.W. 4 who attended the marriage. D.W. 4 was a teacher. His evidence was that defendant No. 3 at the time of marriage talked with Musaliar. His further evidence was that Musaliar called defendant No. 3 and she went near him and told him that he was being authorised by her to give her in marriage to defendant No. 1. F The High Court rightly found that defendant No. 3 gave her consent to the marriage and was in her lucid interval.

The High Court reversed the finding of the Trial Court and held that the marriage took place. The High Court relied on the oral evidence and found that marriage in fact was held. The conclusion of the High Court on both the questions is correct. The appeal is therefore dismissed. No order as to costs.

G

P.H.P. *Appeal dismissed.*

(1) I.L.R. 40 Mad. 660.