



# IN THE SUPREME COURT OF INDIA

Civil Appeal No. 3050 of 2010

Decided On: 15.11.2019

Appellants: Rathnamma and Ors.

Vs.

Respondent: Sujathamma and Ors.

The Supreme Court has observed that mere registration of an agreement of marriage is not sufficient to prove marriage.

In a suit for partition, the claim of the plaintiff was that she was wife of defendant's deceased son. The Trial Court held that there is no evidence of performance of necessary marriage ceremonies in terms of Section 7 of the Hindu Marriage Act, 1955, therefore, mere registration of an agreement of marriage is not sufficient to prove marriage. First Appellate Court held that the agreement is not a proof of solemnization of marriage under the provisions of the Special Marriage Act, 1954 as it is only a contract of marriage which was registered. However, it held that the marriage is valid. Affirming the First Appellate Court findings, the High Court said that in law, a customary Hindu marriage can be proved only on establishing that the parties to the marriage had gone through the necessary observances but since the defendants have denied the marriage itself, they cannot be permitted to turn around to contend that it was not a valid marriage.

In appeal (Rathnamma vs. Sujathamma), referring to relevant provisions of the Hindu Marriage Act, including Section 7, the bench comprising Justice L. Nageswara Rao and Justice Hemant Gupta observed that, in the instant case, the entire claim of the plaintiff is based upon her marriage with defendant's son, the burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence.

The court noted that the plaintiff has not led any evidence of solemnization of marriage as provided under sub-clause (2) of Section 7 of the Act or by leading any evidence of customary rites and ceremonies. On the 'agreement of marriage', the bench observed:

The plaintiff has led evidence to the effect that the marriage was solemnized in the office of Sub-Registrar vide Ex.P/1. Ex.P/1 has been rightly found to be not a certificate of registration of marriage under the Special Marriage Act, 1954 and that there is no evidence that any ceremony has taken place. In the agreement of marriage (Ex.P/1), it is only stated that both parties are of same caste and with the permission and consent of both of their fathers, they have entered into this agreement of marriage. This type of marriage is not recognized in law as Section 7 of the Act contemplates that the marriage can be solemnized in accordance with customary rites and ceremonies of either party thereto and where such



rites and ceremonies include the Saptpadi, the marriage becomes complete and binding when the seventh step is taken.

The court also noted that, considering the relationship between plaintiff and defendant's son, the marriage would be hit by Section 5(v) of the Hindu Marriage Act. Further, the court said:

The plaintiff has not pleaded any custom permitting marriage within the prohibited degree nor there is any proof of solemnization of any marriage by customary ceremonies and rites, therefore, the plaintiff will not be entitled to succeed only on the basis of alleged registration of an agreement of marriage. In the absence of customary ceremonies or the custom permitting marriage between the prohibited degree, the plaintiff has no legal right to claim the share in the property only on the basis that some of the witnesses produced by her admitted that she married Hanumanthappa.

While upholding the Trial Court judgment, the bench further observed:

"The entire case is based upon an agreement of marriage in which there is no assertion regarding solemnization of the customary ceremonies or the rites or that the parties had performed saptpadi in the manner contemplated under Section 7 of the Act, therefore, the plaintiff cannot succeed the estate of Hanumanthappa on the basis of a marriage which she has failed to prove."

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