

HON'BLE SRI JUSTICE A.SANTHOSH REDDY

CIVIL REVISION PETITION No. 3211 of 2017

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is directed against the order, dated 15.03.2017, in I.A.No.27 of 2016 in F.C.O.P.No.249 of 2015 on the file of XV Additional District Judge, Ranga Reddy District at Miyapur.

2. The question in this petition is as to the applicability of the Hindu Marriage Act, 1955 (hereinafter referred as "the Act") in respect of the parties, who belong to the 'Yerukala' community.

3. The marriage of the petitioner-Dr.B.Swapna and the respondent-Dr.B.Gnaneshwar was held on 03.11.2011 at YSR Gardens, Near Housing Board Colony, Hyderabad Chowrastha, Bhongir, Nalgonda District as per Hindu rites and customs. Both the parties are doctors by profession and they belong to 'Yerukala' community. The respondent filed petition seeking divorce under Section 13-1 (ia) of the Act in F.C.O.P.No.249 of 2015. While so, the petitioner filed application in I.A.No.27 of 2016 under Order VII Rule 11 (d) read

with Section 151 of the Code of Civil Procedure, 1908 (for short "C.P.C.") stating that they belong to 'Yerukala' community and as per Section 2(2) of the Act "notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution, unless the Central Government, by notification in the Official Gazette, otherwise directs" and therefore, the petition filed seeking divorce by the respondent is barred under Order VII Rule 11 (d) of C.P.C. The respondent resisted the application by way of filing counter affidavit.

4. The said application was dismissed by the trial Court stating that the Hindu Marriage Act, 1955 applies to all the persons, who are Hindu by religion, but not all castes.

5. The said order, dated 15.03.2017, is under challenge in this revision.

6. Learned counsel for the petitioner submits that the petitioner and the respondent belong to 'Yerukala' community and as such, the Act is not applicable in view of exclusion under Section 2(2) of the Act. Therefore, he submits that the divorce petition filed by the

respondent is barred under Order VII Rule 11 (d) of C.P.C. He has placed reliance on the judgment of Apex Court in **Dr.Surajmani Stella Kujur v. Durga Charan Hansdah¹**.

7. On the other hand, learned counsel for the respondent submits that undisputedly, the marriage of the parties was solemnized as per Hindu rites and customs. As such, she cannot claim the benefit of Section 2(2) of the Act. The trial Court has rightly dismissed the application filed by the petitioner for rejection of the petition for divorce. He has placed reliance on the judgment of Delhi High Court in **Satprakash Meena v. Alka Meena²**.

8. Thus, after hearing the submissions of both the counsel, the point that arises for consideration is; whether the order under revision is correct, legal and proper?

9. In order to appreciate the controversy involved in this revision, it is necessary to refer the relevant provisions of Section 2 (2) of the Hindu Marriage Act, 1955.

¹ AIR 2001 Supreme Court 938

² (Delhi) 2021 (3) R.C.R. (criminal) 809

Section 2 (2) of the Act, reads as follows:

"2. Application of Act.- (1) xxxx

(a) xxx xxx

(b) xxx xxx

(c) xxx xxx

Explanation.- xxx xxx

(a) xxx xxx

(b) xxx xxx

(c) xxx xxx

(2) Notwithstanding anything contained in sub- section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

9. A plain reading of Section 2(2) of the Act, shows the non-applicability of the Act to the members of any Scheduled Tribe unless the Central Government, by notification in the official Gazette, otherwise directs. Article 366 of the Constitution defines the expression and meaning of the word Scheduled Tribe which says, "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed Article 342 to be Scheduled Tribes for the purpose of the Constitution which is to be further read with Constitution (Scheduled Tribes) Order, 1950.

10. The parties in this case belong to 'Yerakula' community, which is a notified scheduled tribe. The respondent filed divorce O.P against the petitioner for dissolution of the marriage by way of decree of divorce. The petitioner has placed evidence to the effect that the parties belong to Yerukala community and their caste is exempted from the application as per Section 2 (2) of the Act. But the trial Court by taking a view that the Hindu Marriage Act applies to all persons, who are Hindu by religion, but not by caste and without considering the exclusion clause and disallowed the claim of the petitioner to reject the plaint. In **Dr.Surajmani Stelle Kujur v. Durga Charan Hansdah**³, the Apex Court, while deciding the appeal filed against the question that who is Hindu for the applicability of the Hindu Marriage Act, at para Nos.4 to 6 held as under:

4. The term "Hindu" has not been defined either under the Act or Indian Succession Act or any other enactment of the Legislature. As far back as in 1903 the Privy Council in *Bhagwan Koer v. J.C. Bose & Ors.* [ILR (XXXI) Calcutta Series 11] observed: "We shall not attempt here to lay down a general definition of what is meant by the term 'Hindu' to make it accurate and at the same time sufficiently comprehensive as well as distinctive is extremely difficult. The Hindu religion is marvellously catholic and elastic. Its theology is marked by eclecticism and tolerance and almost unlimited freedom of private worship. Its social code is much more stringent, but amongst its different castes and sections exhibits wide diversity of practice.

³ AIR 2001 Supreme Court 938

No trait is more marked of Hindu society in general than its horror of using the meat of the cow. Yet the Chamaras who profess Hinduism, but who eat beef and the flesh of dead animals, are however low in the scale included within its pale. It is easier to say who are not Hindus, not practically and separation of Hindus from non-Hindus is not a matter of so much difficulty. The people know the differences well and can easily tell who are Hindus and who are not."

5. The Act, is, therefore, applicable to:

"(1) All Hindus including a Virashaiva, a Lingayat, a Brahmo, Prarthana Samajist and an Arya Samajist.

(2) Budhists (3) Jains (4) Sikhs"

6. In this appeal the parties are admittedly tribals, the appellants being a Oraon and the respondent a Santhal. In the absence of a notification or order under Article 342 of the Constitution they are deemed to be Hindus. Even if a notification is issued under the Constitution, the Act can be applied to Scheduled Tribes as well by a further notification in terms of Sub-section (2) of Section 2 of the Act. It is not disputed before us that in the Constitution (Scheduled Tribes) Order, 1950 as amended by Scheduled Castes and Scheduled Tribes Order (Amendment) Acts 63 of 1956, 108 of 1976, 18 of 1987 and 15 of 1990, both the tribes to which the parties belong are specified in Part XII. It is conceded even by the appellants that "the parties to the petition are two Tribals, who otherwise profess Hinduism, but their marriage being out of the purview of Hindu Marriage Act, 1955 in light of Section 2(2) of the Act, are thus governed only by their Santal Customs and usage".

11. In the instant case, undisputedly, the petitioner and the respondent belong to Yerukala community, which has been specified as the Schedule Tribe in the erstwhile State of Andhra Pradesh under the Constitution (Schedule Tribes) Order, 1950, is entitled to the rights and privileges of tribes under the Constitution of India.

Though, as per the contention of the respondent, the marriage was solemnized as per Hindu rites and customs, as the parties belong to the Scheduled Tribe, otherwise profess Hinduism, but their marriage being out of purview of the Act, in the light of Section 2 (2) of the Act, are thus governed only by their customs and usage. Therefore, the divorce petition filed by the petitioner is clearly barred under the provisions of Section 2(2) of the Act.

12. Having regard to the above, it appears that the application of custom among the Tribes and restrictions under Section 2(2) of the Act were not considered by the trial Court. It has been clearly stipulated in the Act that the provisions of the Act are not applicable to the members of the Scheduled Tribes, unless there is notification issued by the Central Government in the official Gazette making the Act applicable to the Scheduled Tribes. On the other hand, the petitioner established by filing copy of notification that they belong to Erukula community and the same is notified in the constitution (scheduled Tribes Order, 1950) as amended from time to time.

13. More so, after considering the averments in the plaint of F.C.O.P.No.249 of 2015, it is found that the petition is clearly barred

by law under Section 2 (2) of the Act and the same is liable to be rejected in exercise of power under order 7 Rule 11(d) of C.P.C. Therefore, I am of the view that the trial Court has committed jurisdictional error in dismissing the application filed by the petitioner and the impugned order is liable to be set aside exercising the power under Article 227 of the Constitution of India.

14. In the result, the Civil Revision Petition is allowed. The impugned order is set aside. I.A.No.27 of 2016 stands allowed. Miscellaneous applications, if any, pending shall stand closed.

A.SANTHOSH REDDY, J

04.01.2023

Nvl

