

THE COURT OF THE SUB DIVISIONAL MAGISTRATE: R.CHODAVARAM
Present: Sri Neerabh K. Prasad, IAS
Sub Divisional Magistrate.
M.C. 15/89

Between:

1. Dukkara Veerayamma,
W/o Dukkara Saibabu
Ginnepalli (V)
2. Dukkara Nagamani.
D/o Verayamma
3. Dukkara Udayakamar,
S/o Veerayamma. ... Petitioners
(Being Miners represented by mother)

AND

1. Dukkara Saibabu,
S/o Appanna,
Fasullabad,
Devipatnam Mandal. ... Respondent

This petition U/s 488 Cr.P.C. coming on for hearings in the presence of Sri Ch. Raju, Pleader for the petitioner and Sri P. Trinadh Rao, Adcovate for the respondent and having stood over this 17th day of July 1990 for final disposal the Court made the following:

ORDER

This is a petition filed U/s 488 Cr.P.C. claiming maintenance allowance from the Respondent alleging that the Respondent married the petitioner some 8 years back, that they lived together as wife and Husband at Fazullabad (V) of Devipatnam Mandal, that the petitioner beget two children through the Respondent during their cohabitation, that the respondent is habitual drunkard, that he decided to mary a lady by name Boraga Sankaramma D/o. Bodayya of Irlapalli (V) of R. Chodavaram Mandal that the respondent deserted the Petitioners and her two miner children 1. Nagamani and 2. Udaya kumar and that the Petitioners prays the court to pass order for maintenance allowance of Rs. 500/- to the Petitioners and Rs. 500/- for Petitioners 2 and 3 being miners represented by mother, the Petitioners No.1.

The respondent filed counter stating that the contentions in the petitions are utterly false, that she is only a concubine and not legally wedded wife of the respondent, that the petitioner married first to one, Pamarthi narasiah Murthy of Pallas Ramavaram in Gangavaram Mandal, the petitioner ased to lead a way waid life with the respondent without dissolution of the marriage with Pamarthi Narisimhamurthy.

It is contended that the petitioner forcibly took away the 2nd petitioner though she opted to live with the respond that the respondent lives by means to coolie and there is

not properly of his own, and that the allegations that the respondent is a drunkard and accustomed to debauchery with other ladies are false and they should be put to strict proof. It is further contended that the respondent has no permanent assets like house, land and that the claim of Rs. 500/- to the petitioner and Rs.500/- to the petitioners 2 and 3 are highly excessive and the first petitioner has no right for the claim of maintenance.

The petitioner Dukkara Veerayamma was examined. She stated that the respondent is her husband and their marriage took place of 9 years back, that she begot a daughter and a son through the respondent, that she was staying in respondent village until she was deserted that the Respondent is addicted to had view like playing cards, drinking, debauching etc., and used to beat her and that she came to her mother's village Ginnepalli after desertion. The petitioners further stated that the respondent after deserting her contacted one Boraga Bodayya of Irlapalli (V) to give his daughter in marriage to him and later the respondent married Boraga Sankuramma of Irlapalli (V) who is the daughter of Bodayya with whom he contacted previously and that the respondent deserted her with a view to marry Boraga Sankuramma of Irlapalli (V).

Two witnesses were examined on a petitioner's side.

FW2 Kosu Chantababai Dora while corroborating the facts stated by FW1 deposed further that he has attended the marriage of the petitioner with the respondent, that Mangala Sutra was tied in the neck of the petitioner by the respondent and there was also exchange of Talambralu with each other and after the marriage, the bride and bridegroom were sent to bridegroom's house.

PW2 Annika Sousish while corroborating PW1's statement deposed that all the Karyakramam of marriage of the petitioner and respondent was done in the presence of elders and relatives and both of them lived together happily for some time and that the quarrel between both the petitioner and respondent started only after the respondent contracted Boraga Bodayya of Irlapalli (V) to give his daughter. Boraga Sankuramma is marriage to him.

Three witnesses were examined on the side of Respondent.

RW1 Gurrma Krishna stated that the petitioner developed illicit contact with the respondent when also asked to come to her sister's home at Fazullabad (V) and by then, the respondent was already married to Nagamani, that there was no marriage between the petitioner and the respondent, that the respondent's wife Nagamani died and after her death, the petitioner and the respondent lived together happily, that the petitioner went to her parents home and was living there after she attempted to commit suicide by jumping into the well and he along with ten elders went to her parents' house to bring her back, but she refused to come.

RW2 Battu Veeraswamy and RW23 Garlanka Ramarao corroborated the statement of RW1 in all aspects.

RW4 Dukkara Saibabu who is the respondent specifically denied the allegations made against him and stated that the petitioners have no right to claim maintenance as she is a concubine and not a legally wedded wife.

The points for consideration are:-

1. Whether the petitioner is wedded to respondent.
2. Whether the petitioner begot a daughter and a son through the respondent during their cohabitation, and
3. Whether the petitioners are entitled for maintenance allowance if so the amount of maintenance.

POINT I:- It is contended by the petitioner PW1 that she got marriage to the respondent. The same is corroborated by the evidence of PW2 and PW3. However RW1 RW2 and RW3 and respondent RW4 have stated that there was no marriage, but the petitioner and the respondent Co-habitated in the house of the respondent at Fazullabad while the petitioners side content is that there was marriage at Gangampallin in which the parents of respondent and other elders attended. As per the evidence of PW1 PW2 and PW3 the custom of marriage was undergone and then only the bride was sent with the bridegroom. This is denied by the RW1, RW2, RW3 and RW4. But they have stated that there was no marriage and that only the petitioner and respondent lived together. It is not at all in doubt as it is accepted by both the parties and the other witnesses that petitioner and the respondent lived together for nearly 8 years, as stated by the petitioner but as per respondent for 4 years.

The tribal areas and the tribal customs are special because of which special laws and special rules were framed for the schedule areas. In most of these areas right from the British time. The tribal customs which are getting a lot weight. It is strictly not correct to supply the Hindu's Marriage Act and Christian marriage Act as applicable in the plain areas. As these do not have such relevance in the tribal customs but had their own customs, Marriage by capture mutual love and allotment to the marriage by service or socially expected ways of acquiring maid among the tribals whereas these ways of acquiring ways are social cohabited in the Hindu Society. Further divorce, re-marriage and widow marriage are also customarily practices among the tribals, whereas they are to be in the latter community, living together is a marriage for tribals. Especially in the particular case when they have cohabited for a long period of 8 years (4 years as per respondent) even among the educated Hindus most of the marriages are done without registration but that in no way makes the marriage null and void. Similarly to rely only on the registration of marriage for the illiterate ignorant tribal living in the distant interior schedule areas would be causing of grave injustice to the cause of tribal.

In this particular case the respondent and the petitioner have cohabited for a long period and have been getting two children also. They were living together among their own community and in no way criticized from the community. If the marriage would not be accepted as per the tribal customs, they would have been definitely criticized from the society. In fact the respondent has stated that elders promises side had gone to get back the petitioner from her house at Gennepalli when she had left the respondent. The same is corroborated in the evidence of RW1, RW2 and RW3. The village elders would not have gone to bring back the petitioner if she would not have been accepted as wife of the respondent.

For the above reasons, it is concluded that the petitioner is wife of respondent and they had valid marriage for the purpose of Sec. 488 Cr.P.C.

It is no doubt that P1 and P3 are minor daughters and son of age 4 years and 2 years respectively of the P1 and the respondent. This fact is admitted by the respondent and is also corroborated by all the witnesses examined by the Court.

The petitioner is presently living by doing coolie work in her parents house at Gennepalli. The respondent is staying at Fazallabad and refusing to maintain the P1 P2 and P3 at Gennepalli. The respondent is willing to take the petitioners back to Fazulabad and maintain, but P1 has refused on the ground that the respondent already contracted another marriage and staying with another lady. It has been held that wives refusal to live with her husband, if he is staying with another lady is sufficient ground for her refusal to live with her husband, Hence the respondent refused to maintain p1, P2 and P3 at Gennepalli.

P1 is being lady would not be able sufficiently to maintain herself by collie work. Hence it is ordered that the respondent do pay Rs.200/- per month as maintenance of P1.

P2 and P3 are minor and are unable to maintenance themselves. Hence the respondent is ordered to pay Rs.100/- per month each, for P2 and P3. Thus the respondent has to pay the total of Rs.400/- per month to P1, and P2 and P3 which will be paid through a Bark Account in the name of P1.

It is considered that the respondent has sufficient means to pay Rs.400/- per month as the total maintenance's purpose of P1, P2 and P3. As per the claim to property, it can not be decided U/s 488 Cr. P.C. and the party may seek remedy in the civil suit.

Pronounced in open Court this 17th day of July 1990.

Sub Divisional Magistrate.
R.Chodavaram.

Witnesses Examined:

For petitioner.

1. Dukkara Veerayamma.
2. Kosu Chantabbai Dora.
3. Anniks Samaiah.

For espondent

1. Gurram Krishna
2. Batta Veeraswamy,
3. Garlanki Ramarao
4. Dukkara Saibaba

Exhibits marked:

E1 Statement of Sarpanch and village Elders.

Sub Divisional Registrar,
R.Chodavaram

