Privy Council Appeal No. 34 of 1934
Allahabad Appeal No. 26 of 1933

Gopi Krishna Kasaudhan - - - - - - - - *Appellant*

v.

Musammat Jaggo and another - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 28TH APRIL, 1936

Present at the Hearing:
LORD BLANESBURGH.
SIR SHADI LAL.
SIR GEORGE RANKIN.
[*Delivered by* SIR SHADI LAL.]

This appeal raises a question which has an important bearing upon the law of marriage governing the Hindu community. It arises out of a dispute relating to the estate of one Nikku Lal, who died in July, 1923. Nikku Lal was a member of the Vaishya caste of Gorakhpur in the United Provinces of India, and followed the Mitakshara school of the Hindu law.

The plaintiff Gopi Krishna, who is the appellant before their Lordships, is admittedly Nikku Lal's legitimate son; and his right to a moiety of the estate is no longer in dispute. He, however, claims the entire estate on the ground that the defendant, Sri Kishan, is not a legitimate son of Nikku Lal, and, therefore, has no interest in the property left by him.

That Sri Kishan was born of a woman called Jaggo is not disputed, but the question is whether she was, at that time, a lawfully wedded wife of Nikku Lal. It appears that she was originally married to one Baijnath, while she was a minor; and that, after his death, she married his younger brother Sheonath. The second marriage, however, did not prove to be a happy one, as Sheonath had another wife who naturally disliked the advent of a rival. There were consequently quarrels between the two wives, and the husband, in order to put an end to the trouble, abandoned the second wife.

Thus deserted, Jaggo entered into a matrimonial alliance with Nikku Lal by performing the ceremony of *sagai*. Now *sagai* is an informal ceremony of marriage, and the courts below have concurred in holding, not only that she performed the ceremony of *sagai* with Nikku Lal, but also that it is recognised as a valid ceremony in the case of a re-marriage. This decision is not challenged before their Lordships, but it is urged that the lady could not contract a valid marriage during the continuance of her marriage with Sheonath. It is obvious that she could not marry Nikku Lal if she was still Sheonath's wife. The defendants, however, invoke a custom which recognises and sanctions the re-marriage of a woman who has been abandoned by her husband. The learned judges of the High Court have, upon an examination of the evidence, endorsed the conclusion of the Trial Judge that Jaggo had been deserted by Sheonath before she married Nikku Lal, and that, by a custom applicable to the parties, such abandonment or desertion of the wife by her husband dissolves the marriage tie and sets her free to contract another marriage. Their Lordships see no reason for departing from the general rule of practice that they will not make a fresh examination of facts for the purpose of disturbing concurrent findings recorded by two courts in India.

Then, if the existence of Sheonath did not invalidate the marriage of Jaggo with Nikku Lal, was it invalid on any other ground? It is contended on behalf of the appellant that, as the parties to the marriage belonged to two different sub-castes of Vaishyas, the man being a Kasaudhan and the woman an Agrahari, they could not, under the Hindu law, enter into a lawful marriage with each other. Their Lordships are not aware of any rule of Hindu law, and certainly none has been cited, which would prevent a marriage between persons belonging to two different divisions of the same caste. Indeed, there are several decided cases which have upheld such marriages. It is sufficient to refer, in this connection, to two judgments of the Board, *Inderun Valungypooly Taver* v. *Ramasawmy Pandia Talaver and another*, 13 Moo. I.A. 141, and *Ramamani Ammal* v. *Kulanthai Natchear and others*, 14 Moo. I.A. 346.

It is true that both these cases, as well as the judgments of the High Courts which are founded upon them, relate to the Sudra caste; and the argument advanced by the learned counsel for the appellant is that they cannot establish the validity of a marriage between persons belonging to two sub-castes of a twice-born class such as the Vaishyas. There can, however, be no doubt that the texts of the Hindu law do not enunciate any rule prohibiting the union in marriage of persons belonging to different divisions of the same caste, and not a single case has been quoted in which such a marriage has been declared to be invalid.

Their Lordships do not think that the matter requires any elaborate discussion. Put briefly, the position is this.

The Shastras dealing with the Hindu law of marriage do not contain any injunction forbidding marriages between persons belonging to different divisions of the same Varna; and neither any decided case nor any general principle can be invoked which would warrant such a prohibition. Then, what is it upon which the appellant, on whom the onus rests, can sustain the invalidity of the marriage? It is said that marriages between members of different sub-castes of the same caste do not ordinarily take place, but this does not imply that such a marriage is interdicted and would, if performed, be declared to be invalid. Indeed, there is, at present, a tendency to ignore such distinctions, if they ever existed. There exists no doubt a disinclination to marry outside the sub-caste, inspired probably by a social prejudice; but it cannot be seriously maintained that there is any custom which has acquired the force of law. It is, however, unnecessary to pursue the subject, as in the courts below no such custom was set up or proved as would render the marriage invalid.

For these reasons their Lordships hold the marriage to be valid, and they will humbly advise His Majesty that the judgment and the decree pronounced by the High Court should be affirmed and this appeal be dismissed. There will be no order as to costs, as the respondents are not represented before them.

(35102—3A) Wt. 8155-2 175 5/26 E. & S. G. 338

In the Privy Council

GOPI KRISHNA KASAUDHAN

v.

MUSAMMAT JAGGO AND ANOTHER.

DELIVERED BY SIR SHADI LAL.

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