

1947

Present : Dias J.

RATNAMMA, Appellant, and RASIAH, Respondent.

S. C. 695—M. C. Jaffna, 3,153.

*Marriage—Hindu Custom—Tying of Thali—Sufficient if symbolic—Habit and repute—Presumption—Consent of father of minor—Is it necessary?*

The tying of a *thali* is essential for the validity of a Hindu customary marriage. It is sufficient, however, if a symbolic *thali* be used provided it is intended to serve as a *thali*.

Where parties after going through a valid customary form of marriage live together as husband and wife, a presumption of marriage by habit and repute arises.

The want of consent of the father of a minor who contracts a Hindu customary marriage does not invalidate the marriage where the union has been consummated.

**A** PPEAL from a judgment of the Magistrate of Jaffna.

No appearance for the applicant-appellant.

H. W. Thambiah, for the defendant-respondent.

Cur. adv. vult.

September 17, 1947. DIAS J.—

This is an application under the Maintenance Ordinance by Ratnamma who claims she is the lawfully wedded wife of the respondent Tambiah Rasiah.

The union was not registered. The parties are Jaffna Tamils. In regard to such persons, there can be a valid marriage without registration—*Valliammai v. Annammai*<sup>1</sup>; *Poopalaratnam v. Sabapathi-Pillai*<sup>2</sup>.

The evidence shows that in January, 1937, a marriage ceremony according to Hindu rites was performed between the parties by Parameshwara Kurukkal, the priest of the Kanaarmadam Temple. This ceremony was intended to be a marriage. It was public and guests were present. The priest has given evidence to the effect that he performed all the rites of a "second rate" Hindu wedding. He says "The bare essentials wanted for a wedding are the *Pilliayar Poojah* and the tying of the *thalikody* in the presence of the aged people by a priest and the presentation of the *kurai*. All these were done at this wedding *but only the kody and not the thali was tied*". It is common ground that this was not done because "the planets were unfavourable for the tying of the *thali*". It is believed that when the planets are not propitious and the usual gold *thali* is tied, the bridegroom will die within a short time after the ceremony. Therefore a symbolic *thali* was tied instead. The priest says "A piece of turmeric was tied to it (*i.e.*, the *kody*) in place of the *thali*. I questioned Nagalingam . . . . He said the planetary positions were not favourable and that the *thali* could not be tied. We tied the turmeric as it is a requirement of religion. *There is provision in the Shastras that the officiating priest can use his discretion as to what should take the place of the thali*. If no piece of saffron was fixed to the *kody* in place of the *thali*, it was not a valid marriage". If this priest's view is right the tying of the *thali* is essential but it may be a symbolic *thali* and the officiating priest has a discretion in the matter. The priest is corroborated by the witness Velauthaipillai that a piece of saffron was used as a symbolic *thali*.

The respondent called M. Vaiteswara Kurukkal, the officiating priest of the Vairava Temple, as an expert. He agrees that the tying of the *thali* is an essential requisite for a Hindu marriage according to the customary rites. He agrees that there are various forms of ceremonial which vary according to the status of the contracting parties, but he says he has not heard of a symbol like turmeric being used in place of the gold *thali*. At one stage he said, "According to the wishes of the parties anything can be tied as a *thali*". At another stage he said that the *thali* must be of gold. "If there is no gold *thali* I will not perform the marriage, as the rites cannot be performed in accordance with religion".

It is clear that the tying of the *thali* is an essential requirement for the validity of a marriage between Hindus according to customary rites and if this is not done the marriage ceremony is bad<sup>3</sup>. But I am not satisfied that a gold or metal *thali* is essential for that purpose. On the materials

<sup>1</sup> (1900) 4 N. L. R. 8.

<sup>2</sup> (1921) C. L. Rec. 210.

<sup>3</sup> See *Muthukisna's Theowalam* p. 211.

before me, I think a symbolic *thali*, provided it was intended to be used as such and in fact was so used, may serve as a *thali*. It is the spirit and the intention behind the act which matter.

It is clear that after this ceremony the parties believed they were lawfully married and lived together as man and wife and were received by their relatives and friends as husband and wife. What is more, on March 1, 1938, when a child was born to the applicant, the respondent gave notice to the Registrar of the birth and in the cage "Were the parents married" he stated "Married according to Hindu rites"—P 1. It is only when he is sued for maintenance that the irregularity of his marriage struck him.

Where parties after going through a valid customary form of marriage live together as husband and wife, a presumption of marriage by habit and repute arises—*Valliammai v. Annammai (supra)*. It is equally clear that where there has been a customary marriage ceremony without observing the requisite rites usually performed at such marriages, the presumption does not arise—*Selvaratnam v. Anandavelu*<sup>1</sup>; *Thiagaraja v. Kurukal*<sup>2</sup>. For the same reason where a registered marriage is invalid owing to some legal impediment, the presumption of a marriage by habit and repute cannot arise—*Weeraperuma v. Weeraperuma*<sup>3</sup>.

I am, however, not satisfied that the evidence shows that the customary rites were not performed in this case. A gold or metal *thali* was not tied, but a symbolic *thali* was appended to the *koḍy* and tied, and there is not sufficient evidence to show that this was irregular. On the contrary, everybody including the appellant, believed that the ceremony was regular. I, therefore hold that a presumption by habit and repute arises in favour of the applicant and that presumption has not been rebutted.

It was argued that the consent of the bride's parents not having been obtained for this marriage, therefore, it was invalid. In *Selvaratnam v. Anandavelu (supra)* de Krester J. took the view that if one of the contracting parties was a minor, then, in addition to the minor's consent, the consent of the father is necessary to make the marriage of a Jaffna Tamil valid. Wijeyewardene J. who was associated with de Krester J., however, was doubtful whether the want of parental consent would invalidate the marriage, especially after it had been consummated. I am inclined to favour the view expressed by Wijeyewardene J. The main point for decision in that case was whether a customary Hindu marriage contracted without observing the rites and ceremonies usually performed at such marriage was valid. Both the learned Judges answered that question in the negative.

I therefore allow the appeal. The Magistrate has held that the respondent's present income is Rs. 70 a month and he assessed the maintenance at Rs. 15 a month. I see no reason to hold that this assessment is incorrect. The order appealed against is therefore set aside. The respondent will pay to the appellant Rs. 15 a month as maintenance. As there was no appearance for the appellant I make no order as to costs of appeal but she will be entitled to her costs in the lower court.

*Appeal allowed.*

<sup>1</sup> (1941) 42 N. L. R. 487.

<sup>2</sup> (1923) 25 N. L. R. 89.

<sup>3</sup> (1938) 39 N. L. R. 433.