1911

BIJOY KRISHNA KARMAKAR v. RANJIT LAL KARMAKAR.

is weak. These matters are all suspicious, and had I to decide the case on the question of fact, they would have to be carefully considered. As it is, however, I need not express any opinion on this part of the case.

I find for the plaintiff, and give judgment for him with costs on Scale No. 2.

C. E. B

Judgment for plaintiff.

PRIVY COUNCIL.

*P.C.**
1911
March 28; May 18.

MOUJI LAL
v.
CHANDRABATI KUMARI.

[On appeal from the High Court at Fort William in Bengal.]

Hindu law—Marriage—Validity of marriage—Evidence and recognition of marriage—Marriage of insane person whether valid—Presumption as to performance of alleged marriage—Degrees of Insanity—Rites and ceremonies of marriage.

The respondent's claim (as opposed to that of the appellants who were distant agnates) to letters of administration depended upon whether the deceased was her father, and whether he was legally married to her mother. The Courts in India had differed:

Held, (affirming the decision of the High Court), that from the time of the alleged marriage the deceased and the respondent's mother had been recognised by all persons concerned as man and wife, and so described in important documents, and on important occasions. Their daughters were respectably married as would be natural in the case of legitimate children; and that all these facts following upon a ceremony of marriage which undoubtedly took place (though its validity was attacked), afforded an extremely strong presumption in favour of the validity of the marriage, and the legitimacy of its offspring.

Held, also, that the objection to a marriage on the ground of the mental incapacity of one of the parties must depend (as held by the High Court) on a question of degree; and that in this case the evidence of mental infirmity was wholly insufficient to establish such a degree of that defect as to rebut the very strong presumption in favour of the validity of the marriage.

The established presumption in favour of the marriage applied to the forms and ceremonies necessary to constitute it a valid marriage;

* *Present:* LORD ATKINSON, LORD ROBSON, SIR ARTHUR WILSON AND MR. AMEER ALI.

and such forms and ceremonies had been rightly held by the High Court to have been presumably properly performed.

APPEAL from two decrees (11th April, 1905), of the High Court at Calcutta, which reversed three decrees (14th April, 1903) of the District Judge of Bhagalpur.

The objectors in an application for the grant of letters of administration were the appellants to His Majesty in Council.

The question at issue in this appeal was the validity of the marriage of Ishri Pershad and Girjabati, the parents of the respondents Lagan Dai and Chandrabati Kumari. Girjabati died long since, and Ishri Pershad died on 31st July, 1902 and the present appeal arose out of applications made by the appellants and respondents respectively for the grant of letters of administration to his estate. If the marriage be held valid then the respondents (or one of them) are admittedly entitled to letters of administration. Should the marriage be found to be invalid, it is not disputed that the appellants Mouji Lal and Baburam, who were distant agnates of the deceased, would be entitled.

The facts are sufficiently stated in the judgments delivered by the High Court (PARGITER and WOODROFFE, J.J.), which were as follows:—

PARGITER J. "These three appeals arise out of two applications made to the District Judge of Bhagalpur in 1902, for letters of administration to the estate of Ishri Pershad, who died on 31st July, 1902, and left an estate valued at about Rs. 38,900 nett. One of his daughters, Chandrabati, applied in case No. 18 of 1902, and another Lagan Dai in case No. 31, and Mouji Lal and Baburam, the sons of his paternal cousin, applied in case No. 23. Each of these applicants was opposed by the others, and while the relationship of the two cousins was not disputed they denied the legitimacy of both the daughters on two broad grounds, namely, that the marriage of Ishri Pershad, who was insane, with Girjabati, the mother of the two daughters, was invalid, and that they were not begotten by him.

"The District Judge found that the daughters were the legitimate offspring of Ishri Pershad, but that his marriage with their mother Girijabati was invalid for two reasons: *first*, that Ishri Pershad was insane at the time and could not contract a valid marriage, and *secondly*, that the marriage ceremonies were defective and invalid. He, therefore, granted letters of administration to the cousins Mouji Lal and

1911

MOUJI LAL v. CHANDRABATI KUMARI.

Baburam and dismissed the daughters' applications. Against his decision the daughters have now appealed in case No. 23 and their appeals are No. 166 and 235 of 1903. Chandrabati has preferred an appeal against the Judge's decision in her own case No. 18, but Lagan Dai has not appealed against the dismissal of her application No. 31. The daughters were arrayed against each other in the lower Court, but have made common cause gainst the cousins.

"The facts of the family-life are these:—Ishri Pershad lost his first wife and two children almost at the same time. The District Judge has found that they died in Chait 1263 F.S., *i.e.*, in March-April, 1856; that their loss so affected Ishri Pershad's mind that he became insane. These findings have not been contested in these appeals. Ishri Pershad soon afterwards married a second wife, Girjabati, daughters of one Durga Dayal; and the District Judge has found that this marriage took place in Phagun 1264, *i.e.*, February-March 1857. The daughters have not seriously contested this finding and we see no reason to differ from it. Girjabati gave birth to these two daughters, and though the cousins asserted that they were not the offspring of Ishri Pershad, the District Judge has found that they are legitimate, and this finding has not been controverted before us.

"The only questions, then, which have been argued before us are two, namely, *first*, whether the marriage with Girjabati was invalid because Ishri Pershad was absolutely insane at the time, and because no valid ceremony was performed and therefore whether the daughters are legitimate children; and, *secondly*, whether they are fit persons to administer the estate.

"The main points which we have to consider in the first question are two: *First*, whether Ishri Pershad was absolutely insane at the time of the marriage, and, *secondly*, whether the ceremony was duly perfomed.

"With regard to the first point, it appears from the evidence that after an attempt by the cousin Mouji Lal, to have Ishri Pershad declared insane in 1873, was set aside by this Court on the ground of irregularity, the District Judge declared him insane, and appointed his wife Girjabati to be guardian of his person in 1877. It is also clear from the evidence that the sudden death of his wife and children preyed on Ishri Pershad's mind and was the cause of his becoming insane; and the question arises whether the insanity began before or after the second marriage. Girjabati made an application to the Collector (Ex. M.) on the 13th of May 1857, stating Ishri Pershad has recently became insane; and her father, Durga Dayal, who was managing the estate on her behalf, stated in a pottah, Exhibit B, granted in September, 1859, that he himself had been appointed under a general power of attorney, dated the 6th of April 1857: so that Ishri Pershad was plainly considered insane at that time. Since the second marriage took place, only about a month before April 1857, I think, he could not have been completely sane at the time of that marriage. It is necessary, however, to decide what was the character of his mental unsoundness then, for while the daughters do not admit any insanity, the cousins assert that

he was absolutely mad then, and was kept in confinement from the time of the marriage. They have adduced witness to prove this, but I think, their statements are exaggerated and tutored. Twenty years' treatment of that harsh kind, if he had been absolutely mad and also violent or dangerous, would not have improved his mental condition, yet when he was examined by a Munsif in the Lunacy Proceedings in 1877, his statement indicates no violence, but simply that he was talkative and subject to some foolish hallucinations. That kind of mental unsoundness appears to have been the form his insanity took, and it was a natural result of the severe grief he had undergone on the loss of his first wife and children. Its first stages would be marked by mental depression and weakness, which would not have made him incapable of knowing what he was doing. Hence, I think, that that was his mental condition at the time of the second marriage, and that he was not incapable of understanding the ceremony. He would be quite capable of accepting the new wife and assenting to the marriage and the statement that the second marriage was arranged in the hope that it might have a beneficial effect on him, may be taken in a perfectly good and honest sense. Upon this finding, it is not necessary for me to consider the elaborate arguments which have been addressed to us by both parties whether a marriage contracted by a really insane person, is or is not invalid according to Hindu Law.

"With regard to the second point, the cousins assert that the marriage was forced on Ishri Pershad by Girjabati's father, because she had then passed the ordinary marriage age, that he was carried off to her father's house for the marriage, that the ceremony was a mere pretence and that the essential incidents of it were not observed. They have adduced evidence to support these asertions, but I do not think it trustworthy. Some of the witnesses were mere boys at that time who could not have been expected to notice such formal incidents carefully. All the witness speak to a number of details and defects in the proceedings which it is impossible that they could now remember after a lapse of about forty-five years, for there was nothing so special in the circumstances or in the subsequent married life of Ishri Pershad and Girjabati as to impress such particulars on their memories. The part ascribed to the Mahomedan, Dhuman Mian, is incompatible with Hindu custom. I have no doubt that these witnesses have been tutored and their descriptions are unworthy of credit. On the other hand, the social position Ishri Pershad and Girjabati, and the estimation in which they were held for years afterwards, entirely negative the story put forward by these witnesses. There was no commotion in the caste at that time or afterwards. Ishri Pershad and Girjabati always lived together as husband and wife; several children were born; the daughters when marriageable were married into respectable families without the faintest imputation against their legitimacy; Girjabati was always treated as Ishri Pershad's real wife and her position was never disputed in the proceedings taken to declare him a lunatic. Parmeshwari Pershad, one of the witnesses for the cousins who has made particularly strong as-

1911

MOUJI LAL v. CHANDRABATI KUMARI.

persions, described her as Ishri Pershad's wife in a receipt, Exhibit E, which he gave in 1887, and he twice signed Lagan Dai's name for her in her petition and her vakalutnama in 1902, in which she described herself as Ishri Pershad's daughter. If there is any truth in the imputations now made by these cousins, it is hardly credible that they did not put the imputations forward when opposing Girjabati in the matter of Ishri Pershad's insanity in 1873 and 1877. On the contrary, Mouji Lal described her as Ishri Pershad's wife in his petition, Exhibit K, in 1873. One of the cousins, Babu Ram, signed her name for her as Ishri Pershad's wife in a deed, Exhibit 3, that she executed in 1877, and identified her as such when it was registered. He has not ventured to give his own deposition in this case. Moreover, the way in which these cousins have now put forward these imputations is significant. They profess to have known such facts from the very beginning, yet in paragraphs 3 and 6 of their written statement they say they have come to know of them as if only recently. We think the undoubted facts are of greater weight than the wonderful recollections of the witnesses, and that this is a case in which the presumption mentioned in *Brindabun Chandra Karmokar* v. *Chundra Karmokar* (1), may well be applied, namely, that all the necessary ceremonies were complied with. In fact, the whole history of the family is consistent only with the view that the marriage was a valid one. The evidence to disprove that should be strong, distinct and satisfactory: see the remarks in *Lopez* v. *Lopez* (2). But there is no such evidence. I, therefore, find that the marriage ceremony was validly performed.

"On these findings I hold that the daughters were the legitimate children of Ishri Pershad, and that they are entitled to get letters of administration to his estate. But since Lagan Dai's application on her own behalf was dismissed by the District Judge, and she has not appealed against that, letters of administration can only be given to Chandrabati who has appealed. We, therefore, set aside the District Judge's order and direct that letters of administration be given to Chandrabati on condition that she gives security for Rs. 3,000.

WOODROFFE J. I think that the evidence, in particular the conduct of the parties and the documents which have been referred to in the judgment of my learned brother, and also in the argument of the learned vakil for the appellant (Chandrabati), establish the marriage, and that the respondents' (Mouji Lal and Baburam) evidence is not reliable and does not establish its invalidity.

"In the petition of objection the respondents admit that some form of marriage was gone through, but the allegations against its validity are of a vague character. It was alleged that the marriage was invalid, because it took place without the performance of the necessary rites prescribed by the *shastras*, and rendered obligatory by long standing usage. The case as made out in the evidence is that absolutely no ceremonies of any kind were performed and that the marriage was one

(1) (1885) I. L. R. 12 Calc. 140. (2) (1885) I. L. R. 12 Calc. 706, 732.

which was brought about by fraud and force, but as to which there is no suggestion in the petition of objection of the respondents.

"The other ground upon which it is alleged that the marriage was void is that assuming that the marriage in fact took place, and was in other respects valid, it was yet invalid because Ishri Pershad was a lunatic at the time. Assuming that the marriage of a lunatic is invalid, as to which there is at any rate authority to the contrary, I agree with my learned brother in holding that it lay upon the respondents to establish that the unsoundness of mind was of such a character as to render the marriage invalid, and that there is no sufficient or reliable evidence before us from which we can come to the conclusion that the unsoundness of mind was of such character as would render the marriage invalid by reason of the fact that Ishri Pershad was incapable of accepting the bride during the marriage ceremony and of understanding what was going on."

The appeal was accordingly allowed.

On this appeal,

E. U. Eddis, for the appellant, contended that Ishri Pershad was rightly held on the evidence to have been insane at the time of his marriage; and that by reason of such insanity his marriage was invalid according to Hindu law. Reference was made to *Bodhnarain Singh* v. *Omrao Singh* (1); and *Hancock* v. *Peaty* (2). The lower Courts have both held that Ishri Pershad was insane; the only question was whether his insanity was sufficient to invalidate the marriage. The District Judge had rightly held in the evidence that the marriage ceremonies were not properly performed, and that the marriage was consequently invalid for that reason also; that decision had been wrongly reversed.

Ross and *G. A. H. Branson,* for the respondents, were not heard.

The judgment of their Lordships was delivered by

SIR ARTHUR WILSON. This is an appeal against two decrees of the Calcutta High Court, dated the 11th April, 1905, which reversed certain decrees of the District Judge of Bhagulpur.

(1) (1870) 13 Moo. I. A. 519, 527. (2) (1867) L. R. I. P. & D. 335, 340

1911

MOUJI LAL v. CHANDRABATI KUMARI.

The whole proceedings arise out of some conflicting applications for the grant of letters of administration to the estate of one Ishri Pershad, who died on the 31st July, 1902. In the present appeal the only claims in question are those of the respondent Chandrabati, alleged to be a daughter of the deceased, and that of the appellants, who base their claim on their position as somewhat distant agnates. It is admitted that the agnates are entitled if Chandrabati is not. The question therefore is, whether Chandrabati and a sister of hers, who is not a party to this appeal, are daughters of Ishri Pershad, and that again depends upon whether he was married to their mother Girjabati.

On that question the Courts in India have differed, the District Judge deciding against the marriage, and the High Court in favour of it.

Their Lordships are of opinion that the view taken by the learned Judges of the High Court is correct.

In the judgment of Partiger, J., it is clearly and concisely shown that from the time of the alleged marriage Ishri Pershad and Girjabati were recognised by all persons concerned, as man and wife, and so described in important documents and on important occasions. Their daughters were respectably married as would be natural in the case of legitimate children; and these facts following upon a ceremony of marriage which undoubtedly took place, though its validity is attacked, afford an extremely strong presumption in favour of the validity of the marriage and the legitimacy of its offspring.

On two grounds it is sought to impugn the efficacy of the marriage. It is said, first, that the alleged husband was at the time completely insane, so much so as to be incompetent to enter into a marriage.

Their Lordships agree with the learned Judges of the High Court in thinking that, to put it at the highest, the objection to a marriage on the ground of mental incapacity must depend on a question of degree, and that in the present case the evidence of mental infirmity is wholly insufficient to

establish such a degree of that defect as to rebut the extremely strong presumption in favour of the validity of marriage.

The second ground of attack upon the marriage rested upon the allegation that the forms and ceremonies necessary to constitute a valid marriage had not been gone through on the occasion in question.

On this point also the opinion of the learned Judges of the High Court was in favour of the marriage, and their Lordships think, rightly. To such matters of form and ceremony the established presumption in favour of marriage undoubtedly applies.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

The appellants will pay the costs of the respondent Chandrabati, who alone appeared in the appeal.

Appeal dismissed.

Solicitors for the appellants 1 and 2: *Theodore Bell & Co.*

Solicitor for the respondent Chandrabati: *W. W. Box.*

J. V. W.