GUNARATNAM
v.
REGISTRAR-GENERAL

COURT OF APPEAL
TILAKAWARDANE, J. AND
AMARATUNGA, J.
CA NO. 1031/01
AUGUST 30, 2001

Marriage Registration Ordinance s 22, – Amendment No. 12 of 1997 – S. 2 Marriage Registration (Amendment) Act No. 18 of 1995 – S 15 and 12 – In terms of the Amendment only persons who have completed 18 years of age could enter into a valid marriage – Parental consent is invalid.

Petitioner is seeking to challenge the order of the Registrar-General, where by he had refused to register the marriage of one T who was 14 years of age and V who was 18 years. The refusal by the Registrar-General was on the ground that both parties were under 18 years of age, although the parents of both parties have consented to the marriage.

Held:

(1) Prior to the Amendment No. 18 of 1995, the prohibiting age of marriage was contained in section 15 of the Marriage Registration Ordinance.

(2) Subsequently, the prohibited age of marriage was raised, and no marriage contracted after the coming into force of the new section was considered to be valid, unless both parties have completed 18 years of age. This section operates as an absolute bar against the marriage of persons below the age of 18 years.

Per Tilakawardane, J.

"Section 22 of the Marriage Registration Ordinance has also been amended by the Marriage Registration (Amendment) Act No. 12 of 1997. It appears that the framers of the law did not consider the implications of the Marriage Registration (Amendment) Act No. 18 of 1995, when they enacted the amendment to section 22 of the Marriage Registration Ordinance."

Per Tilakawardane, J.

> "Since the prohibited age of marriages has been raised to 18 years of age, the absolute bar to marriage must necessarily override the parental authority to give consent to the marriage of a party. It was not relevant whether parents agreed or did not agree to the marriage of their children, only persons who had completed 18 years of age could enter into a valid marriage."

APPLICATION for a Writ of *Certiorari.*

G. H. C. Ameen for petitioner.

M. R. Ameen, SC for respondent.

Cur. adv. vult.

October 26, 2001

SHIRANI TILAKAWARDANE, J.

The petitioner has preferred this application challenging the Order of 1
the Registrar-General whereby he had refused to register the marriage of Tharmini Murugesu who was 14 years of age and Vishnu Jiththan Thanabalasingham who was 18 years born on 18. 09. 1983. The refusal by the Registrar-General (P4) was on the grounds that both parties were under 18 years of age. The matter to be determined in this case is whether the order of refusal of registration of marriage of Vishnu Jiththan Thanabalasingham and Tharmini Murugesu was invalid in law.

It is clear that the parents of both parties have consented to the 10
marriage. But, the issue becomes then whether in spite of the consent, there is a prohibition in law for the registration of their marriage. Prior to the amendment, the prohibiting age of marriage was contained within the provisions of section 15 of the Marriage Registration Ordinance. In terms of this section, "No marriage shall be valid, the male party to which has not completed 16 years of age or the female 12 . . ."

Subsequently, the prohibited age of marriage was raised in terms of an amendment to the said Marriage Registration Ordinance, consequent upon section 2 of the amendment being replaced by section 15 of the aforesaid Marriage Registration Ordinance. In terms of the amended section, no marriage contracted after the coming into force of this section was considered to be valid, unless both parties to the marriage have completed 18 years of age.

It is clear, therefore, that this section operates as an absolute bar against the marriage of persons below the age of 18 years. Tharmini Murugesu, the daughter of the petitioner is admittedly under the age of 18 years, and in the circumstances, the letter of the Registrar-General dated 11. 6. 2001 refusing the registration of marriage of a person under the age of 18 years of age is valid in law.

The petitioner has contended that the Registrar-General was bound in terms of section 22 of the Marriage Registration Ordinance that the parents of the parties even though one of the parties to the marriage was under the age of 18 years, could with the cosent of the parents enter into a contract of marriage even in an extreme situation where one party was a minor and 14 years of age. Section 22 of the Marriage Registration Ordinance has also been amended by the Marriage Registration (Amendment) Act No. 12 of 1997. In terms of section 2 whereby consent to marriage of parties was required where the party was under 18 years of age. It appears that the framers of the law did not consider the implication of the Marriage Registration (Amendment) Act No. 18 of 1995 when they enacted the amendment to section 22 of the Marriage Registration Ordinance.

The matter to be considered is whether the amendment to section 22 of the Marriage Registration Ordinance is inconsistent with the amendment to section 15 of the said Marriage Registration Ordinance. On a cursory reading of the sections, it is clear that no consent of the parents could be given where the absolute bar to marriage exists. Therefore, since the prohibited age of marriage has been raised to

18 years of age, the absolute bar to marriage must necessarily override the parental authority to give consent to the Marriage Registration Ordinance gives a parent –

(1) the authority to give consent to a marriage where a party is below the age of 18 years and above the prohibited age of marriage; and

(2) where such consent is required for the said marriage.

Prior to the amendment in terms of the Marriage Registration Ordinance, consent of parents was authorised in situations where they were above the prohibited age of marriage, but had not reached the age where they could consent to marriage as they were under the authority of their parents. Parental authority was necessary because the law recognized that consent could not be given by a person under the age of 21 years.

In general, the parental authority was an essential prerequisite for the marriage of a minor. There was a need for the consent from the parents of such parties. So that in addition to the minor's consent to the marriage, there must be the parental responsibility of consenting to the marriage of a minor. The minority was an impediment to the marriage of a minor. However, the amendment referred to above by Act No. 18 of 1995 expressly and specifically prohibited the age of marriage of parties who had not completed 18 years of age. In such cases, it was not relevant where parents agreed or did not agree to the marriage of their children. But, only persons who had completed 18 years of age could enter into a valid marriage.

It is clear that when these sections are considered, the overall intention of the legislature was that no person can enter into a contract of marriage until they had completed 18 years of age.

Counsel for the petitioner has submitted that in interpreting the inconsistency to above, that it was possible for a marriage to be contracted under the prohibited age of 18 years with the consent of the parents. However, the prohibition referred to in terms of the amending Act No. 18 of 1995 section 2 is an absolute bar or prohibition to the contract of a marriage. It is a mandatory prohibition and explicitly states that after the coming into force of this section *(gazetted* on the 20th of October, 1995), no marriage shall be valid unless both parties have completed 18 years of age. I find that there is nothing ambiguous about this prohibition which needs no interpretation. Therefore, on a simple reading of the section, from the date on which the amending section became operative, no party under the age of 18 years could contract a valid marriage in Sri Lanka. Parental authority or consent to such marriage would be invalid in law as this was an absolute prohibition to marriage.

Accordingly, as the petitioner's daughter was below the prohibited age of marriage, she could not contract a marriage in terms of the aforesaid law. The Registrar-General's refusal to register the marriage in these circumstances is valid in law. The application of the petitioner is refused with costs of Rs. 1,050.

AMARATUNGA, J. – I agree.

Application dismissed.