

**IN THE HON'BLE FAMILY COURT OF GUNTUR, ANDHRA PRADESH**

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**TEAM CODE-**

**IN THE MATTER OF**

**MOHAN**

**...PETITIONER**

**V.**

**FATIMA**

**...DEFENDANT**

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**WRITTEN SUBMISSION ON BEHALF OF THE DEFENDANT**

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**LIST OF ABBREVIATIONS**

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&	And
¶	Paragraph
AIR	All India Reporter
ALL	Allahabad
Anr.	Another
AP	Andhra Pradesh
Art.	Article
Cr.	Criminal
Edn.	Edition
Govt.	Government
HMA	Hindu Marriage Act
Hon'ble	Honourable
i.e.	That is
No.	Number
PC	Privy Council
SC	Schedule Caste
SC	Supreme Court
SCC	Supreme Court Cases
u/s	Under Section
v.	Versus
Vol.	Volume
www	World Wide Web

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STATEMENT OF JURISDICTION

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THE PETITIONER HAS APPROACHED THIS HON'BLE FAMILY COURT OF GUNTUR, ANDHRA PRADESH UNDER SECTION 7 OF FAMILY COURTS ACT, 1984<sup>1</sup>.

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<sup>1</sup> **Section 7- Jurisdiction.-**

(1) Subject to the other provisions of this Act, a Family Court shall- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) Have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation. **Explanation.**-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage



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**STATEMENT OF FACTS**

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For the sake of brevity and convenience of this Hon'ble Court the facts of the present case are summarised as follows:

1. Mohan, born as fourth child in family consisting of his father Raju alias Rahmatullah Khan, his mother Renuka alias Ria Khan and three siblings, used to live with his maternal grandparents who was Hindu. At the instance of observing different practices in family it was explained to him that his parents were also Hindu by birth, though belonging to a lower caste. For the reasons of such discriminatory practices against the people belonging to lower caste he decided to convert to Islam.
2. Determined to bring about change in such discrimination he applied for seat in Guntur Medical College, but the converts to other religions from Hinduism were treated as backward classes thereby he didn't get admission. On the advice, he got himself converted to Hinduism by going through Suddhi ceremony, claiming to be a member of Madiga caste he got admission as falling under Schedule Caste.
3. In the fifth year of his study, he fall in love to a Muslim girl Fatima, though aware about their status in the society. The girl reasoned that she can convince her father for their marriage as they are both Muslims, but then Mohan disclosed about his conversion to Hinduism which made her feared that the marriage would not be accepted by her father as being strong follower of Islam. When she went home, got aware about the preparations of her marriage to which Mohan insisted they should get married soon and under the emotional threat and pressure she agreed for such marriage.
4. He made Fatima to undergo Suddhi ceremony, solemnized the marriage in a temple, thereafter also married under Muslim form wherein Qazi performed their marriage. When the girl felt guilty about the marriage, she confessed it to her father who convinced her to get out of this relationship as Mohan is not a trustworthy person. He made her to believe and migrated her to another medical college. When she stopped all her contacts with Mohan, he filed for Restitution of Conjugal Rights under the HMA, 1955 in Family Court of Guntur, Andhra Pradesh.

5. Fatima challenged the validity of the marriage alleging that her conversion to Hinduism not valid. Though Mohan countered that in case the Hindu marriage is not valid, the Muslim marriage is valid one. Fatima again contended that even that marriage was not valid as a Muslim woman cannot marry a non-Muslim. Thus creating dichotomy when Mohan accepted that his conversion was not valid as done for the purpose of getting admission in Medical College, thereby validating the Muslim marriage.

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**STATEMENT OF ISSUES**

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- I. WHETHER THE CONVERSION OF MOHAN IS VALID.**
- II. WHETHER THE CONVERSION OF FATIMA WAS INVALID.**
- III. WHETHER RESTITUTION OF CONJUGAL RIGHTS BE GRANTED TO MOHAN.**
  - A. WHETHER THE MARRIAGE BETWEEN MOHAN AND FATIMA WAS VALID.**

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SUMMARY OF ARGUMENTS

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**I. THE CONVERSION OF MOHAN IS VALID.**

It is a settled law that a person who was born to converted parents, originally belonged to Hindu religion and of Scheduled Caste, is entitled to claim the status of Scheduled Caste, after his re-conversion to Hinduism and having been accepted by the said community people. on conversion to Hinduism, a person born of some other religion converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold.

**II. THE CONVERSION OF FATIMA IS INVALID.**

Conversion under compulsion is violative of Right to Freedom of Religion guaranteed by Art-25 of Constitution of India. In the constitutional assembly debate the clause read as ‘Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence shall not be recognised by law’. Any interference with that right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25 (1) of the Constitution of India.

**III. RESTITUTION OF CONJUGAL RIGHTS CANNOT BE GRANTED TO MOHAN**

The *sine qua non* for maintaining an application under Section 9 is the existence of relationship of husband and wife having no dispute in their existence of marriage between them for seeking decree for restitution of conjugal rights. There ought to be prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. The marriage without the consent of the legal guardians would thereby be considered to be irregular, which may be terminated by either party, before the consummation by words showing an intention to separate. The court has opined that the child marriage performed on the grounds of fraud or force, would attract the provisions of Section 12 (1) (c) of the Hindu Marriage Act, 1955.

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ARGUMENTS ADVANCED

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**I. THE CONVERSION OF MOHAN IS VALID.**

1. In the instant case, Mohan (herein after referred to as 'Petitioner') contended that his conversion is invalid as it was for the purpose of taking benefit of getting admission to the medical college. It is submitted that, petitioner was born to a converted parents. His parents was originally Hindu before their conversion to Islam. The Constitutional Bench of the Hon'ble Supreme Court in *Principle, Guntur Medical College v. Mohan Rao*<sup>2</sup>, has laid down, that a person whose parents or grandparents, originally belonged to a scheduled caste before their conversion to some other religion can, on re-conversion to Hinduism, be regarded as a member of the scheduled caste, only if he is accepted as a member of that caste by the other members of the caste.
2. Therefore, it is clear that on conversion to Hinduism, a person born to some other religion converts can become a member of the caste to which his parents belonged, prior to their conversion, subject to the acceptance of the other people of the community. This principle was reiterated in the case of *Slevi M. Shyamala v. Tamil Nadu State Scrutiny Committee*.<sup>3</sup>
3. It is a settled law through various decisions<sup>4</sup> that a person who was born to converted parents, originally belonged to Hindu religion and of Scheduled Caste, is entitled to claim the status of Scheduled Caste, after his re-conversion to Hinduism and having been accepted by the said community people.
4. Also, in the case of *Durgaprasada Rao v. Sudarasanawam*,<sup>5</sup> it was observed that on conversion to Hinduism, a person born of some other religion converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold.

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<sup>2</sup> [1976] 3 SCR 1046.

<sup>3</sup> (2009) 2 MLJ 278, *see also* N.S. Ziauddeen v. S. Ashok Kumar, Principal Sessions Judge, Kilpauk, Chennai and Ors. 2002(2) CTC 257.

<sup>4</sup> Kumari Madhuri Patil v. Additional Commissioner, Tribal Development 1994 AIR SCW 4116; Valasama Paul v. Cochil University [1996]1SCR128; S. Swvigaradoss v. Zonal Manager, F.C.I [1996] 1SCR995.

<sup>5</sup> AIR 1940 Mad 513.

5. The question of conversion was answered by the court in the case of *C.M. Arumugam v. S. Rajgopal*<sup>6</sup>, wherein a person belonged to Adi Dravida caste before his conversion to Christianity, could, on reconversion to Hinduism once again become a member of the Adi Dravida caste. Supreme Court, after examining the question on principle and referring to the decided cases, pointed out that the consistent view taken in this country since 1886 was that on reconversion to Hinduism, a person can once again become a member of caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member.
6. The reasoning on which this decision proceeded is equally applicable in the instant case where the parents of a person are converted from Hinduism to Islam and he is born after their conversion and on his subsequently embracing Hinduism. From the above discussed cases, it can be said that the conversion of Petitioner is valid in the eyes of law as it is only subjected to the acceptance to the society. In the instant case there is no sign of any opposition from the society and thus conversion is valid.
7. It is pertinent to note that in the case of *Principle, Guntur Medical College v. Mohan Rao*,<sup>7</sup> which has the similar fact, therein the respondent got converted to Hinduism to take admission in the college and the Apex Court held it to valid. Thus, following the decisions it can be said that the conversion of Mohan is valid and he at the time of the marriage was a Hindu.

## II. THE CONVERSION OF FATIMA IS INVALID

8. In the instant case the Petitioner by the emotional threat and pressure converted Fatima (hereinafter referred to as 'Defendant'). It is submitted that such a conversion cannot be said to be valid in the eyes of law. It is important to note that Petitioner made the Defendant undergo sudhi ceremony and also changed her name as Meera.<sup>8</sup>
9. At this point, it is pertinent to note that few states have implemented laws criminalising conversion resulting out of force, fraud or undue influence.<sup>9</sup> The constitutionality of these Acts were challenged in light of Article-25 of Constitution of India.<sup>10</sup> The Apex court upheld the Constitutional Validity of the Act. The Apex

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<sup>6</sup> (1976) 1 SCC 863.

<sup>7</sup> *Supra* Note-1.

<sup>8</sup> Para-10, Moot Proposition.

<sup>9</sup> Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968; Orissa Freedom of Religion Act, 1967.

<sup>10</sup> *Digbijaya Missal v. State of Orissa*, AIR 1977 SC 908; *Evangelical Fellowship of India vs. State of Himachal Pradesh*, 2013 (4) RCR (Civil) 283.

court opined that, these steps are legislatively stipulated precautions to ensure that the process of renouncing one religion and adopting another is genuine, voluntary and bona fide, and free from inducement, coercion and fraud.

10. Following the reasoning of the Apex Court it can be said that conversion by the undue influence cannot be said to be valid in the eyes of law and subsequent actions on that conversion is also rendered invalid.
11. Also, conversion under compulsion is violative of Right to Freedom of Religion guaranteed by Art-25 of Constitution of India. In the constitutional assembly debate Mr. K. M. Munshi had passed a resolution making conversion by use of force undue influence illegal. The clause read as “Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence shall not be recognised by law.”<sup>11</sup> This has been incorporated in Art 25 of Indian constitution, whenever a person has been forcibly converted his right to profession, practice and propagation of religion is violated.
12. What is penalised is conversion by force, fraud or by allurement. The other element is that every person has a right to profess his own religion and to act according to it. Any interference with that right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25 (1) of the Constitution of India, as the Article guarantees religious freedom subject to public order.<sup>12</sup>
13. From the discussed case laws and legal provisions, it can be said that the conversion of Defendant was invalid as it was under undue influence and it is invalid in the eyes of law, thus Defendant was Muslim at the time of her marriage.

### **III. RESTITUTION OF CONJUGAL RIGHTS CANNOT BE GRANTED TO MOHAN**

14. Section-9, Hindu Marriage Act, 1955 provides for the Restitution of Conjugal Rights wherein it provides relief to the party if one spouse withdraws from the society of other for no reasonable cause but the prerequisite condition of such relief is a valid marriage. The *sine qua non* for maintaining an application under Section 9 is the existence of relationship of husband and wife having no dispute in their existence of marriage between them for seeking decree for restitution of conjugal rights.<sup>13</sup> If the

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<sup>11</sup> CAD Vol III Part II Clause 17.

<sup>12</sup> Rev. Stainislaus v. State of Madhya Pradesh and Ors. AIR 1977 SC 908.

<sup>13</sup> Santosh Kumar Pandey v. Ananya Pandey, AIR 2013 Chh 95.

fact of the valid marriage is not established, the rejection of a prayer for the restitution of conjugal rights is proper.<sup>14</sup> An application for restitution of conjugal rights can be entertained only when the marriage between the parties is valid. Where the parties are not legally married or the marriage was not subsisting at the time of the petition, the question of granting of decree of restitution could not arise.<sup>15</sup>

**A. The Marriage Between Mohan And Fatima Was Not Valid.**

15. The Defendant disputes the existence of a valid marriage as the conversion of Defendant from Islam to Hinduism was not valid, for the reason it was made under emotional threat and pressure by Mohan. The consent for the said marriage was taken by undue influence which rendered the marriage invalid thereby falsifying the claims of the husband.
16. The conversion of Fatima was not valid for the reasons of her being minor, the consent of the lawful guardian or parent needs to be acknowledged but in the instant matter, no such consent was obtained before conducting the ceremonial process, thereby invalidating the existence of a marriage. Thus, Fatima at the time of marriage was Muslim, married to a Hindu thus marriage ceased to exist under the provision specifying for attainment of majority age at the time of marriage.
17. Further in the case of *Savita Ben Somabhai Bhatiya vs. State of Gujrat*<sup>16</sup>, the court held that if the wife never converted into Hindu before marriage, then the marriage could not be solemnized unless conversion according to the Hindu rituals done with prior consent, thereby the marriage between a non-Hindu and the applicant would be contrary to the provisions of the law, furbishing parties to justify their claims on other grounds.<sup>17</sup> Henceforth, where the respondent in a petition for restitution of conjugal rights denies the marriage itself the court has jurisdiction to decide whether there is marriage or not.<sup>18</sup>
18. In *Asfaq Qureshi v. Ayesha Qureshi*<sup>19</sup>, the Family Court dismissed the petition for restitution of conjugal rights on the grounds that even though the conversion of a

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<sup>14</sup> Satyabhama Pradhan v. Sidhartha Sahoo, AIR 2005 Ori 177.

<sup>15</sup> Jiva Magan v. Bai Jethi, AIR 1941 Bom 535; Parbia Ram v. Thopli, AIR 1966 HP 20; Ravinder Kumar v. Kamal Kanta, (1976) HLR 380; Inder Yash v. Manjeet Kaur, (1980) HLR 251.

<sup>16</sup> (2005) 3 SCC 636.

<sup>17</sup> P.P. Puthiyanal Attakoya Thangal and another vs. Union Territory of Lakshadweep and another 1988 Cr.L.J. 1206.

<sup>18</sup> Gurdial Kaur v. Mukaan Singh, AIR 1967 P&H 235: 68 Punj LR 744: ILR (1967) 1 Punj 443.

<sup>19</sup> AIR 2010 Chh 58, 2010 (3) CGLJ 28, 2011 (2) RCR (Civil) 478.



party to Islam admitted, it was only for purpose of marriage and not for faith in unity of God and therefore, such conversion was void. In the *Ratio Decidendi* court opined- “No person shall be allowed to exploit the religion for achievement of personal and selfish ends like marriage without consent.” Division Bench finally held that marriage between non-Hindu lady and Hindu male is not a valid marriage under the 1955 Act as under that Act marriage can be solemnised only between two Hindus.<sup>20</sup> Thus, it can be said that the conversion for the achievement of personal purposes is invalid and even though not objected, the marriage between the Hindu and non-Hindu cannot subsist, thereby quashing claims of the husband for restitution of conjugal rights in the present case.

19. There ought to be prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians.<sup>21</sup> Marriage shall be entered into only with the free and full consent of the intending spouses.<sup>22</sup> The marriage without the consent of the legal guardians would thereby be considered to be irregular, which may be terminated by either party, before the consummation by words showing an intention to separate.<sup>23</sup> The Defendant challenged the validity of the marriage on the ground that her conversion was not valid, thereby even after following the rituals of the Hindu marriage any arrangement made in regard to an irregular marriage stands vitiated. The Defendant herein has intention to separate and since the consent of the legal guardians has not been obtained, the termination can be validated.
20. A Mahomedan woman cannot contract a valid marriage except with a Mahomedan. She cannot contract a valid marriage even with an Idolator or a fire-worshiper, however such marriages are irregular in nature.<sup>24</sup> In the instant matter, the conversion of Fatima was not valid, thus she was a Muslim at the time of the marriage, and since Mohan was Hindu from his conversion by following Sudhi ceremony, the marriage becomes irregular, which could be terminated at instance of either party. The requisite presence of two witnesses at the time of marriage was also not fulfilled in the present matter, thereby forming grounds for repudiation of such marriage.<sup>25</sup>

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<sup>20</sup> Vijayakumari V. Devabalan: I (2004) DMC 667.

<sup>21</sup> B.R. Ambedkar, Clause 17, Part II, Vol. 3, Constitutional Assembly Debates.

<sup>22</sup> Article 23(3) ICCPR; Article 16(2) UDHR, 1948.

<sup>23</sup> Bak Bibi v. Qaim Din, AIR 1934.

<sup>24</sup> Mulla, Principle of Mahomedan Law, 2013, Ed. 20th, Para-259, Pg-338.

<sup>25</sup> Kazi Siddique Hossain v. Salim Khatoun, 61 CWN 187.

21. In the light of the judicial pronouncements and validity of the provisions governing separate religions, it can be concurred that the conversion for the marriage in the present case was invalid, thereby the girl still subsumes to be a Muslim thereby quashing the claim of the existence of a valid marriage. Thus where one of the parties to the marriage was not a Hindu it was held that the marriage was not valid under Section 5 of the Hindu Marriage Act, 1955 and hence no relief by way of restitution could be sought.<sup>26</sup>
22. Thus the restitution of conjugal rights cannot be claimed by the Petitioner in the present matter as the marriage in itself is not valid, providing Fatima the right to repudiate such arrangement based on undue influence and emotional threat considered to be grounds for separation.
23. *Arguendo*, even it is assumed that the conversion was valid then the Defendant at the time of marriage was Hindu and minor of 17 years. Also, the consent for the marriage was taken under emotional threat and pressure.<sup>27</sup> Any improper pressure put upon a person to induce him/her to confer the benefit upon the party pressing amounts to undue influence. Undue influence is presumed until the contrary is proved when the relationship between the parties is such that one is entitled to the confidential advice of the other.<sup>28</sup> The marriage entered into by undue influence becomes a voidable marriage that is they are liable to be invalidated by the action of court.<sup>29</sup> The court has opined that the child marriage performed on the grounds of fraud or force, would attract the provisions of Section 12 (1) (c) of the Hindu Marriage Act, 1955.<sup>30</sup> This makes the marriage voidable under Hindu law and thereby the petitioner is not entitled to avail any relief by the virtue of restitution of conjugal rights.

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<sup>26</sup> Chitralekha Kunju v. Shiba Kunju, (1998) II DMC 454 (Bom- DB).

<sup>27</sup> Para-9, Moot Proposition

<sup>28</sup> Asutosh Mookerjee, Marriage Separation and Divorce, Ed. 4, 2008, Kamal Law House, Pg- 96.

<sup>29</sup> Section- 12(1) (c), Hindu Marriage Act, 1955.

<sup>30</sup> Gajar Narain Bhura v. Kanbi Kunverbai Parbat, AIR 1997 Guj 185; see also Harvinder Kaur v. Gursewak Singh, (1998) AIHC 1013 (P&H).

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PRAYER

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*Wherefore in the light of facts presented, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Defendant humbly pray before this Hon'ble Court that it may be pleased to adjudge and declare that:*

1. The petition is dismissed.
2. The marriage is invalid.

*Or pass any other order that the court may deem fit in the light of equity, justice and good conscience and for this Act of kindness of Your Lordships the Defendant shall as duty bound ever pray.*

Sd/- \_\_\_\_\_

**Counsels for the Defendant**