The with customary rites and ceremonies of

ASSIGN BUSTER

The present Act retains the provision relating to performance of ceremonies for a lawful marriage. Section 7(1) provides that a Hindu marriage must be solemnised in accordance with customary rites and ceremonies of either party thereto and must fulfil the conditions prescribed for the same by Section 5 of the Act. This Section does not prescribe any particular form of ceremonies requisite for solemnisation of the marriage but leaves the parties to choose any form of marriage. But where it includes Saptapadi, the marriage becomes complete when seventh step is completed. When it is proved that Saptapadi-gaman is not part of the customary rites, it need not be performed; otherwise Saptapadi remains an essential ceremony in a Hindu marriage.

The Hindu Marriage Act has removed the impediments based on religion, caste and sects with the result, the Hindus, Sikhs, Buddhists, Jains, Lingayats and others can intermarry but for such marriage to be valid tenets of each religion have to be kept in view so that a marriage would be valid only if the ceremony, through which it is solemnised, is sanctioned by the religion of either party as a customary ceremony. In case of Saptapadi, marriage becomes complete and irrevocable on the completion of the seventh round. Here the term “ fire” is not used in its general sense. The fire lit at the time of marriage with the enchanting of Vedic mantras becomes sacred and parties to marriage must take seven steps around such fire.

Where observance of Saptapadi is the requirement of neither party to the marriage, the performance of such rituals and ceremonies becomes essential as are accepted by either party. It is only on the performance of such ceremonies and rites that the marriage would become complete and

irrevocable. The views of the courts on the compulsive character of the observance of necessary rituals and ceremonies in marriage are now well settled. The Supreme Court in Bliaurao Slmnker Lokhande v. State of Maharashtra, has clearly held that the word “ solemnised” means marriage celebrated with proper ceremonies and in due form; it, therefore, follows that unless the marriage is celebrated and performed with proper ceremonies and in due form it cannot be said to have been solemnised.

Merely going through certain ceremonies with the intention that the parties be taken to be married will not make the ceremonies prescribed by law or approved by any established customs. Smt. Margaret Palai & others v.

Suit. Savitri Palai & others, the court clearly redefined and held that the word “ solemnised” means to celebrate marriage with proper ceremonies with intention that parties should be considered to be married. It is a sacrament because there is emphasis on the performance of the customary rites and ceremonies including Saptapadi where it is treated as an essential ceremony for the completion of the marriage. In the present case the plaintiff being a Christian woman not considered to be a valid marriage as per Hindu law and she is not entitled to share in the ancestral property.

In Joyita Saha v. Rajesli Kimiar Pandey, the court held that the word “ solemnised” means marriage celebrated with proper ceremonies and in due form-like Saptapadi and also Kanyadan. The Court also expressed that if Saptapadi and also kanyadan were not performed, marriage cannot be said to be “ solemnised” according to Hindu rites—that marriage is void ab initio. In case of a married couple it is presumed that due religious ceremonies had

been performed for the completion of marriage. According to Orissa High Court where two persons are leading a married life, there is presumption under law that their marriage must have been performed as per religious rites and ceremonies.

But where their married status is disputed, it would be required of the party relying upon that marriage to prove that the said marriage had been performed as required by the customary law governing the parties thereto. Where the religious or customary rites necessary to complete the said marriage do not stand proved, the recognition of marriage is denied. A tall claim by a woman that her marriage was performed in a temple would not be sufficient to establish her lawful marriage until direct proof is given by evidence in respect of its performance as required by the social and religious formalities. The mere fact that woman has been authorised by a certain dead person to receive his salary does not establish her marriage with him.

Where two persons are socially recognised as a married couple, a strong presumption is raised in favour of their lawful marriage duly solemnised with the help of customary rites and religious ceremonies. In case of Aslwka Kumar v. Usha Kumari, the Delhi High Court observed that with the passage of time it becomes difficult to prove that at the time of marriage the religious rites and ceremonies had been properly performed. The witnesses in quite good number goes out of scene.

It is just possible that the priest performing the marriage may also be no more in existence. In such circumstances the fact that they are living together in itself is an evidence of their marriage. The High Courts of Madras

and Punjab have laid down that the performance of two religious ceremonies, viz., firstly, Kanyadan, i. e.

, giving the daughter in marriage and secondly, Panigrahan and Saptapadi are essential in every Hindu Community. Apart from the above no religious act is required to complete the marriage. The doctrine of factum valet does not apply where two persons live as husband and wife without having performed religious ceremonies and rites.

Even where two persons lead a married life for a pretty long time, the law will not recognise their lawful marriage under this doctrine for want of performance of their marriage by observance of social and religious rites and ceremonies. The Supreme Court in Surjit Singh Kaur v. Garja Singh, held that if the marriage is not a valid marriage, it is no marriage in the eyes of law. The bare fact of a man and woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even they may hold themselves out before society as husband and wife and the society treats them as husband and wife. In case of widow marriage it is not necessary to fulfil the obligation 0f performing religious rites and ceremonies.

The Supreme Court in Dr. Surajmani Stella Kajnr v. Ditrg Charan Hansdali,’ observed that if the parties to the petition are of two tribals, who otherwise profess Hinduism, but their marriage being out of the purview of Hindu Marriage Act, 1955 in light of Section 2(2) of the Act would be governed only by their customs and usages of the tribe.