

K.Manoharan Vs. Geetha

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Court : Kerala

Decided On : Oct-29-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : K.Manoharan

Respondent : Geetha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN TUESDAY, THE 29TH DAY OF OCTOBER 2013 7TH KARTHIKA, 1935 Mat.Appeal.No. 122 of 2009 (B)
----- [AGAINST THE

JUDGMENT

DATED 26-07-2008 IN O.P.NO.1400/2006 OF THE FAMILY COURT, PALAKKAD]

..... APPELLANT/PETITIONER: -----

K.MANOCHARAN, AGED 52 YEARS, S/O.K.KRISHNAN, PUTHUVALPOTTAVILA VEEDU, PACHALLOR P.O, THIRUVANANTHAPURAM. BY ADVS.SRI.VIJU ABRAHAM, SRI.JOY .C. PAUL, SRI.DOMINIC JOHNSON.

RESPONDENTS/RESPONDENTS: ----- 1.

GEETHA, D/O.SAROJINI SANKARAN, AGED 39 YEARS, KRUTTIKUNNATHU VEEDU, KULAPPULLY, SHORNUR, PALAKKAD.

2. SAROJINI SANKARAN, W/O.SANKARAN, AGED 60 YEARS, KUTUTTIKUNNATHU VEEDU, KULAPULLY, SHORNUR, PALAKKAD DISTRICT. BY ADVS. SRI.T.RAVIKUMAR, SMT.M.K.ASWATHI. THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 29-10-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Prv. ANTONY DOMINIC & P.D. RAJAN, JJ.

..... Mat.A.No.122 of 2009
..... Dated this the 29th day of October, 2013

JUDGMENT

Antony Dominic, J: This appeal is filed by the petitioner in O.P.No.1400/2006 on the file of the Family Court, Palakkad. The said original petition was filed by the appellant alleging that he got married to the first respondent on 23.3.2005 in accordance with the customary rites of their community. According to the appellant, long before his marriage with the first respondent, the first respondent was already married to PW2 and that the said marriage was not dissolved in accordance with law. Therefore, he contended that the first respondent had a spouse living at the time of her marriage with the appellant. On this basis, alleging violation of Section 5 (1) of the Hindu Marriage Act, the original petition was filed under Section 11 of the said Act for declaring that his marriage with the first respondent is a void one. Before the Family Court, appellant and PW2 were examined and on behalf of the first respondent, she herself was examined as RW1. Exts.A1 and A2 and Ext.C1 were marked. After considering the evidence, the Family Court rejected the Mat.A.No.122 of 2009 2 contention. Yet another contention raised by the appellant was that, his wife was suffering from leprosy and other incurable diseases. That allegation was denied by the first respondent and on evidence, the Family Court also rejected the contention. He had yet another claim for damages for Rs.1,00,000/- (Rupees One lakh) and that also stands rejected.

2. We heard learned counsel for the appellant and learned counsel for the respondents.

3. In so far as the case set up under Section 5 (1) of the Hindu Marriage Act is concerned, the case of the appellant is that, on the night of the marriage, the first respondent herself told the appellant that she married to PW2 and on that basis refused to co-habit with the first respondent. According to him, he made enquiries and found out PW2. It is stated in his evidence that, on enquiry, PW2 also confirmed the marriage between himself and the first respondent. However, when examined in the court, though he confirmed the alleged marriage between himself and the first respondent, PW2 stated that he did not remember the date of the marriage or even the name of first respondent's father. He also stated that he never in his life had seen the appellant. The Mat.A.No.122 of 2009 3 evidence adduced by the first respondent is one of denial. She stated that she was never married to PW2 and according to her, after the appellant got transferred to Valayar, she left the matrimonial home and had never returned.

4. Acceptability of the case set up by the appellant under Section 5 (1) of the Hindu Marriage Act will depend upon the acceptability or otherwise of the evidence of PW2. As we have already stated, although he claims that he got married to the first respondent, he or PW1 did not produce any documentary evidence substantiating the same. He could not say when the marriage was solemnized nor did he say the name of any one who witnessed the said marriage. He also did not remember even the name of the first respondent's father or the address. His evidence that he never met PW1 in his life contradicts the evidence of PW1 which says otherwise. Therefore, the unsubstantiated evidence of PW2, was insufficient to conclude the claim that PW2 was married to the first respondent and that, therefore, the marriage between the appellant and the first respondent is a nullity. Therefore, on this issue, we are in completely agreement with the view Mat.A.No.122 of 2009 4 taken by the Family Court.

5. In so far as the plea of the appellant that the first respondent was suffering from leprosy and other incurable diseases is concerned, first of all incurable disease is not a ground for nullity but is only a ground for divorce. There was no prayer in the petition for divorce and therefore, the court could not have taken cognizance of this allegation. Even otherwise, the claim made by the appellant stands belied by Ext.C1 certificate obtained from the Medical Board. In such circumstances, this

case also did not merit acceptance.

6. Since both the aforesaid claims are rightly turned down by the Family Court, the appellant could not have sustained his claim for damages also.

7. The sum and substance of the above discussion is that the judgment does not suffer from any illegality justifying interference in this appeal. The appeal is accordingly dismissed. ANTONY DOMINIC, JUDGE. P.D. RAJAN, JUDGE. cl

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