

Magania Vs. Premsingh

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Court : Mumbai

Decided On : Oct-12-1906

Reported in : (1906)8BOMLR856

Judge : Louis P. Russell, Acting C.J., ;Beaman and ;Heaton, JJ.

Appeal No. : Civil Reference No. 10 of 1906

Appellant : Magania

Respondent : Premsingh

Disposition : Petition dismissed

Judgement :

Louis P. Russell, Acting C.J.

1. In this case we are asked to make absolute the decree nisi for divorce which was passed by the lower Court.
2. The circumstances of the case are certainly very peculiar.
3. The petitioner is a Hindu lady belonging to the sweeper, caste and she married according to the Hindu rites and according to the custom of the caste a gentleman of the name of Premsingh (son of Nanhu Mehtar) who was also a sweeper.
4. Apparently they became man and wife according to the custom of their caste.

5. Sometime afterwards, according to the evidence, they both embraced the Christian religion and after that the husband became enamoured of his deceased brother's widow and went through the form of marriage with her and lived with her as her husband having previously repudiated his conversion to Christianity.

6. Under these circumstances we are asked to make the decree nisi, which has been passed, absolute for the dissolution of this marriage.

7. But we are of opinion that it would be contrary to law for this Court to dissolve a marriage between Hindus.

8. It is unnecessary to go through a large number of authorities which start that proposition.

9. It is only necessary, we think, for us now to refer to a Full Bench case, *Thapita Peter v. Thapita Lakshmi* ILR (1894) Mad. 285, where the facts are very much the same as the present, and where it was held that having regard to Section 7, the marriages contemplated by the Divorce Act are those founded on the Christian principle of union of one man and one woman to the exclusion of others and that consequently the Act does not contemplate relief in cases where the parties have been married under the rites of Hindu law, a Hindu marriage not being monogamous one.

10. Under these circumstances we must decline to make this decree nisi absolute and the petition accordingly will have to be dismissed.