

Elizabeth Vs. Abraham

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Court : Mumbai

Decided On : Dec-07-1999

Reported in : AIR2000Bom276; 2000(2)MhLj414

Judge : V.K. Barde, ;S.B. Mhase and ;B.H. Marlapalle, JJ.

Acts : [Divorce Act, 1869](#) - Sections 10 and 17

Appeal No. : Reference Case No. 2 of 1997

Appellant : Elizabeth

Respondent : Abraham

Advocate for Def. : A.B. Bajpai, Adv.

Advocate for Pet/Ap. : R.M. Borde, Adv.

Judgement :

Barde, J.

1. The IInd Additional District Judge, Jalna, in Regular Civil Suit No. 2/96, has passed decree nisi under Section 10 of the Indian [Divorce Act, 1869](#) (For short, hereinafter referred to as 'the Act'). Hence, the matter has come up before this Bench, for confirmation of decree as per the provisions of Section 17 of the said Act.

2. The parties filed a compromise in the said proceedings before the learned Judge. The learned Judge recorded the compromise and then passed the decree. So, a very short point is to be considered in this matter, as to whether a decree for dissolution of marriage can be passed on the basis of compromise between the parties in the proceedings under the Act.

3. The learned Judge has referred to the ruling in the matter between Mrs. B. v. Mr. V., 1989 Bom LR 448. However, he lost sight of the important circumstance, that in the said matter, the decree for dissolution of marriage was prayed under the provisions of Hindu Marriage Act. The provisions of the Act were not considered by the learned Single Judge while holding that the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure are applicable to a proceedings under the Hindu Marriage Act and, therefore, decree based on compromise between the parties was considered legal and valid. There is no reference to the provisions of the Act in the said judgment and, therefore, the ruling on which the learned IInd Additional District Judge has relied upon cannot be made applicable to a proceedings under the Act.

4. No doubt, in the proceedings for dissolution of marriage, whether it is under the Hindu Marriage Act, or, under the Act, or, under the Special Marriages Act, the Court has to take into consideration, whether there is collusion between the parties in filing such proceedings. However, the provisions under the Act are more stringent than the provisions under the other two Acts. The learned IInd Additional District Judge lost sight of the specific provisions of Sections 12, 13, 14 and 47 of the Act which make it mandatory on the Court to find out whether there is collusion between the parties in the proceedings filed before the Court. If the Act prohibits the Court from passing a decree for dissolution of marriage, in any proceedings where there appears to be collusion between the parties, then a decree by consent of the parties cannot be passed.

5. It may be that under other Marriage Acts, now, a decree of dissolution of marriage can be obtained by mutual consent, for instance, as per the provisions of Section 13-B of the Hindu Marriage Act, 1955. However, unless and until there is any such amendment In the Act, the Court cannot pass a decree of dissolution of

marriage on the basis of consent or compromise between the parties.

6. In this respect, we would like to refer to the observations of Special Bench of Karnataka High Court, in the matter between *Susanna v. Yeshwanth*, AIR 1985 Karnataka 133, which are as follows at page 135:--

'Thus, in our considered view, proof regarding dissolution of marriage ceases to be a simple lis between the petitioner and the respondent. What, generally, is an adversary proceeding becomes in such cases a matter of the Court's conscience and then the true question which arises for consideration is whether the evidence led by the petitioner is such as to satisfy the conscience of the Court. It is impossible to reach such satisfaction unless the petitioner offers cogent and convincing evidence, not only proving the ground on which dissolution of marriage is sought but also proving that there is no collusion, connivance, unnecessary delay and the like and that the dissolution of marriage is necessary in the interest of justice to uphold the public morality.'

The same view is expressed by the Full Bench of Rajasthan High Court, in the matter between *Fazal Masih v. Smt. Patience*, AIR 1974 Raj 130. Thus, it may be seen that there is a consistent view of the Court, that in the proceedings under the Act, decree for dissolution of marriage, by consent of the parties, cannot be passed. The petitioner will have to lead 'cogent and reliable evidence to satisfy the Court, that the grounds alleged in the petition are true and sufficient to grant the decree for dissolution of marriage. In such circumstances, we hold that the decree, as passed by the learned IInd Additional District Judge, Jalna, on the basis of compromise between the parties, cannot be confirmed and the Reference has to be rejected.

7. However, we would like to adopt the course, adopted by the Special Bench in the above referred ruling of the Karnataka High Court. There, the matter was remanded back to the trial Court for recording evidence and for disposal of the matter according to law. Because of the misconceptions, the matter is disposed of on the basis of the compromise. However, for that, the petitioner should not be made to file another petition to seek the same relief. To reduce the costs of the parties and multiplicity of the proceedings, on rejecting the Reference, we return

the concerned record to the learned IInd Additional District Judge, Jalna, with a direction that he shall now examine the parties and their witnesses and he should record his findings on merits and decide the suit according to law. In the given circumstances, no order as to costs.

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