

In Re: Talaprolu Eswaramma

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Court : Andhra Pradesh

Decided On : Jul-17-1959

Reported in : AIR1960AP66

Judge : Umamaheswaram, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9(1) and 28; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 26 and 96

Appeal No. : S.R. No. 6720 of 1959 and Appeal No. of 1959

Appellant : In Re: Talaprolu Eswaramma

Advocate for Pet/Ap. : Valluri Parthasarathi, Adv.

Judgement :

ORDER

Umamaheswaram, J.

1. The short question that falls to be decided is whether an appeal filed against a decree ordering restitution of conjugal rights under Section 9(1) of the Hindu Marriage Act (XXV of 1955) should be numbered as a regular appeal or as a civil miscellaneous appeal. Sri Valluri Parthasarathi the learned Advocate for the petitioner invited my attention to the several provisions of the Act drawing a distinction between decrees and orders. Sections 9, 10, 11 and 12, relate to

decrees for judicial separation, decrees of nullity and decrees of divorce. Sections 24 - 26 relate to passing orders for maintenance and expenses of proceeding and for custody of children. Section 25 enacts that at the time of passing any decree, orders may be passed for maintenance and support also.

Under Section 28, it is provided that all decrees and orders made by the Court in any proceeding under the Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction, and may be appealed from under any law for the time being in force. So, a marked distinction is made in the Act between decrees and orders. The decrees and orders are made appealable under Section 28 according to the law for the time being in force, i. e., the provisions of the Civil Procedure Code. The decrees would consequently be appealable under Section 28 of the Hindu Marriage Act read with Section 96 C. P. C., and the appeal as against a decree for resumption of conjugal rights under Section 9(1) would be a regular appeal.

The mere fact that the proceeding does not start as a suit under the terms of Section 26 C. P. C. by the presentation of a plaint or in any manner prescribed by the Rules framed under the provisions of the Civil Procedure Code does not affect the question. A similar view was taken by me in S. R. No. 35641 of 1958 in regard to an appeal arising out of proceeding under Section 295 of the Indian Succession Act for the grant of a probate.

2. The reference is answered accordingly.

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