

Are Lachia Vs. Are Raja Mallu

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SooperKanoon Citation : sooperkanoon.com/428471

Court : Andhra Pradesh

Decided On : Oct-31-1962

Reported in : 1964CriLJ237

Judge : Munikannaiah, J.

Appellant : Are Lachia

Respondent : Are Raja Mallu

Judgement :

ORDER

Munikannaiah, J.

1. The Munsif Magistrate, Luxettipet, has found that in the Golla or Shepherd's community, divorce in, accordance with custom is prevalent and that the parties before him in Case No. 9/6/60 had been separated as the divorce had taken place between that husband and wife on 31-8-1959. He, however, considered that such a divorce had not had the stamp or approval or the decree of the Court Under Sections 10 and the of the Hindu Marriage Act of 1955 (hereinafter called 'the Act') and that even for. a valid divorce under custom, a decree of the District Court Under Section 14 of the Act is a necessity. In this view, the learned Munsif Magistrate decreed, that the wife is entitled to the payment of Rs. 20/- per mensem as maintenance. He also felt that the decision in Meganatha v. Smt. Susheela (S) : AIR1957 Mad423 supported the view that a customary divorce

cannot be complete or rendered legal if no decree concerning it Under Section 14 of the Act is obtained. While considering the revision petition filed by the husband, Art- Lachia, against this order, the Sessions Judge of Adilabad has relied upon Nallathangal v. Nainan Ambalam : AIR1960 Mad179 and opined that the Munsif Magistrate fell into a grievous error in thinking that a customary divorce is not valid even if proved as a fact.

2. It should be pointed out that the terms of Sub-section (2) of Section 29 of the Act are unambiguous and placed the matter of divorce according to the, custom as outside the scope of the Hindu Marriage Act, and thus does not disturb the position which a, customary divorce occupied before the enactment of this Act. That Sub-section states that nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain, the dissolution of a Hindu Marriage whether solemnized before or after the commencement of this Act. What has therefore to be found as a fact for this exception to operate is whether there had been as a fact such a customary divorce or dissolution of a Hindu marriage. It is not necessary for the parties to such a divorce or dissolution of the Hindu marriage to have again to go before the Court Under Section 10 or 13 and obtain sanction of the Court in order that this divorce or dissolution may be rendered valid. A reference to the decision relied upon by the Munsif Magistrate makes it clear that it is wholly inapplicable to the present case as it does not at all pertain to a case of customary divorce. As there is no ambiguity in regard to status of the parties after the customary divorce has taken place, this reference in my view, has to be accepted.

3. The revision petition is therefore allowed and the order of the Munsif Magistrate is set aside.