

M. Esthar Rani Vs. M. Devadanam

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Court : Andhra Pradesh

Decided On : Jul-27-1987

Reported in : AIR1988AP1

Judge : K. Bhaskaran, C.J., ;Jagannadha Rao and ;Syed Shah Mohammed Quadri, JJ.

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

Appeal No. : R.C. No. 92 of 1983

Appellant : M. Esthar Rani

Respondent : M. Devadanam

Judgement :

K. Bhaskaran, C.J.

1. An application under S. 10, Divorce Act, (,the Act) for a decree dissolving the marriage between the petitioner and the respondent has been disposed of by the learned District Judge without adverting to the, pleadings, appreciating the evidence or stating the ground on which the decree for dissolution of marriage had been granted. For the sake of precision, we would quote the whole of the order:

'P. W. 1 examined, Petitioner's advocate represents. Petitioner's side evidence is closed. I am satisfied from the, evidence of P. W. 1 which remained unchallenged

and as there is no evidence to the contra that the divorce prayed for should be granted. Hence this petition is allowed, but in the circumstances without costs, subject to confirmation by the High Court'.

2. Dissolution of marriage is a matter of considerable importance which would have its repercussion on the future life and well being not only of the parties to the proceedings but also of their children. It is significant to note that the jurisdiction to entertain and dispose of the application for dissolution of marriage or for declaration that the marriage between the parties is null and void is conferred on no Court inferior to the District Court; that a decree for the dissolution of marriage or declaring that the marriage is null and void is subject to confirmation by a Full Bench of the High Court under Ss. 17 and 20 of the Act. We are siding these salient features in order to impress upon the District Judges who are called upon to decide applications for dissolution of marriage and for declaration of marriages to be null and void, to exercise due diligence, and to apply their minds properly with the seriousness attached to the solemn function entrusted to them.

3. The first and foremost duty of a District Judge dealing with an application for dissolution of marriage is to address himself to the grounds on which the relief could be granted under S. 10 of the Act. Secondly, he should find out whether the necessary averments are made in the application, and, if so, whether they are supported by acceptable and credible evidence. Thirdly, it is also his duty to see whether the proceedings (are?) vitiated by collusion between the parties, Fourthly, it is his further duty to see whether the alleged adulterer is made co- respondent where the petitioner is the husband, in compliance with the provisions of S. 11 of the Act.

4. It is noted that very often some of the District Judges adopt shortcuts without taking pains to ascertain at least whether the ground, if any, alleged is one on which a decree for dissolution of marriage could be granted. After all, the number of grounds are not many; and they are all very specific also. In the instant case, there is only the vague statement in the petition that the respondent was leading a life of debauchery; her interested and uncorroborated evidence also does not go beyond that. There is no specific allegation much less proof that the respondent

was guilty of adultery. It is not, difficult to make out from the petitioner's evidence that what prompted her to file the application for dissolution of marriage was the fact that her husband was suffering from leprosy, that she was told that it was a contagious disease and that she was not wanting to stay with him. These are in fact, irrelevant considerations in deciding the question as to whether ground has been made out for the grant of a decree for dissolution of marriage. The learned Judge has not recorded any positive finding that the respondent was either guilty of adultery coupled with cruelty, or adultery coupled with desertion for more than two years without sufficient cause, so as to base his decision on it for the grant of a decree for dissolution of marriage in terms of S. 10 of the Act.

5. The position being as stated above, we decline to confirm the decree for dissolution of marriage between the petitioner and the respondent granted by the court below. We, however, feel that justice should not be the casualty on account of failure on the part of the parties to raise the necessary pleadings or adduce sufficient evidence or failure on the part of the District Judge to properly apply his mind to all relevant and essential aspects of the matter. In that view, we would remand the matter to the court below so that the parties may amend the pleadings, if so advised, and adduce further evidence, if any to substantiate their respective contentions. If an application for this purpose is made the learned Judge would look into the matter and pass appropriate orders. If the pleadings are amended and further evidence if any, is adduced, the learned Judge would address himself to the grounds available in S.10 of the Act and dispose of the matter in accordance with law after properly considering the pleadings and evidence on record.

6. The reference under S.17 of the Act is answered in the above terms.

7. Order accordingly.