Jackson Vs. Jackson

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Court : Allahabad

Decided On : Dec-22-1911

Reported in : 13Ind.Cas.958

Judge : Chamier, J.

Appellant : Jackson

Respondent : Jackson

Judgement :

Chamier, J.

1. This is a suit by Esther Marie Jackson for a declaration that her marriage with Frederick Ormond Layland Jaokson is null and void.

2. The parties, who are Christians, were married in Allahabad, on January 12th, 1910. The respondent, who had been married to another woman, had obtained in the Calcutta High Court a decree nisi for dissolution of that marriage, and the decree had been made absolute on December 6fch, 1909. He believed that on the decree being made absolute, he was free to marry again, and be assured the present petitioner that all the necessary formalities had been complied with. I find it proved that respondent's former wife was alive when the parties were married.

3. On the above facts, the petitioner claims to be entitled to a declaration that her marriage with the respondent is null and void.

4. Section 19 of the Indian Divorce Act provides that such a declaration may be made at the instance of a wife on the ground that the former wife of the husband was living at the time of the marriage, and the marriage with such former wife was then in force, Section 57 of the Act provides that when six months after the date of a decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction or when any such appeal has been dismissed, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death, provided that no appeal to His Majesty in Council has been presented against any such decree. There is no appeal to His Majesty in Council against a decree nisi for dissolution of a marriage (see Section 56); therefore, there can be no doubt that the decree of a High Court dissolving a marriage' referred to in Section 57 is the decree absolute, not the decree nisi. The Section was construed in this way by Sir James Hannen in the case of Warter v. Warter (1890) 15 P.D. 152 : 59 L.J.P. 87 : 63 L.T. 250 : 54 J.P. 631 where one Taylor had obtained in the Calcutta High Court a decree absolute for dissolution of his marriage on November 27th, 1879, and the divorced wife was married to Colonel Warter on February 3rd, 1830. Three days later, Colonel Warter made a Will in favour of his wife. In April 1881, on the advice of a Solicitor, Colonel and Mrs. Warter were re-married at a registry office. Colonel Warter having died without re-executing his Will or making another, the question arose whether the marriage of April, 1881, revoked the Will. It was held that the marriage of February 1880 was null and void, and, therefore, the marriage of April 1881 on valid and revoked the Will. Sir James Hannen said: 'The Indian Law, like our own, does not completely dissolve the tie of marriage until the lapse of a specified time after the decree. This is an integral part of the proceedings by which alone both the parties to the marriage can be released from their incapacity to contract a fresh one.' Following this decision, I hold that the respondent's marriage with his former wife was still in force when he went through the form of a marriage with the petitioner.

5. I find on the issues that the petitioner professes the Christian religion, and that the marriage between her and the respondent is null and void. I make a declaration accordingly. The respondent will pay the petitioner's costs.