

Sandhya Vs. Dinesh

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Court : Madhya Pradesh

Decided On : Aug-07-2002

Reported in : I(2003)DMC117

Judge : A.K. Gohil, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 7, Rule 11

Appeal No. : Civil Revision No. 160 of 2002

Appellant : Sandhya

Respondent : Dinesh

Advocate for Def. : O.P. Sharma, Adv.

Advocate for Pet/Ap. : M.A. Bohara, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A.K. Gohil, J.

1. The applicants have filed this civil revision against rejection of their application Under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure (for short 'the Code'), in a suit for declaration filed before the First Additional District

Judge, Ujjain seeking a .declaration that the marriage be declared dissolved,as the dissolution has already been taken place as per the recognised custom prevailing in the caste of the plaintiffs and defendants. The Trial Court rejected the aforesaid application on the ground that the suit is main-tamable and before granting such a decree for declaration it is necessary to hold an inquiry about the prevailing custom and then only customary divorce can be recognised by the Court and a declaratory decree can be granted.

2. The Trial Court placing reliance on a decision in the case of P. Mariammal v. Padmanabhan, reported in AIR 2001 Madras, has rejected the aforesaid application of the applicants holding therein that such suit is not barred by any law.

3. I have heard learned Counsels for parties and perused the record.

4. I do not think that the Trial Court has committed any illegality in rejecting the application filed Under Order VII Rule 11 of the Code because for filing such an application; the applicants/defendants have to prove prima facie that suit is barred by any law looking to the statement of the plaint and in this case applicants/defendants have failed to prove prima facie that the suit is barred by any law.

5. In the case of P. Mariammal (supra), the Madras High Court has held that:

'The scheme and object of the present Act is not to override any such custom which recognized divorce and effect is given to the same by the saving clause contained in Sub-section (2) of Section 29 of the Hindu Marriage Act. In that case it is not necessary for parties in any such case to go to Court to obtain divorce on grounds recognized by custom. The custom must, of course, be valid custom.'

6. So if a suit is filed to seek declaration on the basis of recognised custom, it is required to be enquired that the custom is prevailing and parties have rightly obtained customary divorce as per the prevailing custom and that the said custom is recognized and is not opposed to public policy.

7. In view of the foregoing discussions, this revision has no merits and is hereby dismissed with no order as to costs. Consequently M. (C) P. also stands disposed of.

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