

Binu Vs. Sajan

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Court : Kerala

Decided On : Nov-07-2002

Reported in : AIR2003Ker93

Judge : R. Rajendra Babu, J.

Acts : [Divorce Act, 1869](#) - Sections 10, 15, 18 and 19

Appeal No. : O.P. No. 16435 of 2001

Appellant : Binu

Respondent : Sajan

Advocate for Def. : M.N. Mathew, Adv.

Advocate for Pet/Ap. : George Cherian, Adv.

Judgement :

ORDER

R. Rajendra Babu, J.

1. The wife filed this Original Petition for dissolution of her marriage with the respondent under Section 10 of the Indian Divorce Act on the grounds of cruelty and desertion.

2. The respondent filed a counter denying all the allegations levelled against him. But, he made a counter claim for a declaration that the marriage was null and void under Sections 18 and 19 of the Act on the ground of fraud. When the respondent sought to let in evidence for proving his allegation of fraud in obtaining his consent for the marriage, the petitioner objected contending that the respondent is not entitled to a decree declaring the marriage null and void in a proceedings initiated by the petitioner for dissolution of marriage under Section 10 of the Act. Accordingly, the above question has to be considered as a preliminary issue and the learned counsel for both sides were heard on the preliminary issue.

3. The only question for consideration is whether the respondent is entitled to a declaration of the marriage as null and void under Sections 18 and 19 of the Act in a proceedings initiated by the opposite side for dissolution of marriage under Section 10 of the Act.

4. The learned counsel for the petitioner submitted that in view of Section 15 of the Act, a petition filed for dissolution of marriage under Section 10 of the Act, the opposite party can dispute the above allegations and claim for dissolution of the marriage on other grounds, but, he cannot claim for a decree declaring the marriage null and void, as Section 15 of the Act do not envisage the grant of a different relief. The learned counsel for the respondent, on the other hand submitted that the claim put forward in the counter, being a counter claim or a cross suit, he will be entitled to that relief in view of the provisions of the Code of Civil Procedure, as the provisions of the CPC had been made application under Section 45 of the Act. S. 45 of the Act says that subject to the provisions herein contained, all proceedings under the Act between the parties shall be regulated by the provisions of CPC. In fact, Section 45 contemplates the procedure to be followed in the trial of the cases or petitions filed under the Act. When there are specific provisions in the Act, such provisions are to be complied with and the application of the provisions of CPC shall be subject to such provisions in the Act. The opening of the Section 45 'subject to the provisions herein contained' would make it clear that the application of the provisions of CPC shall be subject to the provisions under the Act. The Act provides a specific provision under Section 15 of the Act regarding the counter claims. When the same statute makes a specific

provision regarding the same, the general provision contained in CPC cannot have any application. But, the procedure for trial of the proceedings under the Act has to be in accordance with the provisions of CPC. Section 15 of the Act specifies about the counter claim to be considered under the Act.

5. Section 15 of the Act reads:

'Relief in case of opposition on certain grounds. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion or, in case of such a suit instituted by a wife, on the ground of (her adultery or cruelty or desertion), the court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to (such adultery, cruelty) or desertion'.

The section specifically mentions that in any proceedings for dissolution of marriage instituted by one of the spouses, the other spouse also shall be entitled to the same relief on the grounds specified under the above Section. Section 15 of the Act does not contemplate a different relief, viz., a relief other than dissolution of marriage. The relief of dissolution of marriage under Section 10 of the Act to be granted by this Court is only a decree nisi, which has to be made absolute under Section 16 of the Act after the expiry of a period of six months, whereas a decree under Section 18 of the Act, namely declaration of the marriage as null and void is not a decree nisi, but an absolute one. In that respect also, the nature of the decree differs. Section 15 of the Act contemplates the grant of the same relief which was claimed by the spouse who filed the petition for dissolution of marriage and it does not contemplate the grant of a different relief. Hence, a different relief as claimed by the respondent cannot be granted, though he made such a counter claim in the counter.

6. When the evidence was let in, regarding the counter claim put forward, it was objected to by the other side. When the counter claim made in the counter does not come within the ambit of Section 15 of the Act, evidence also cannot be let in to prove the same. The contention put forward by the respondent cannot be

accepted and no evidence can be let in to substantiate the above contention put forward in the counter in the same proceedings.

Preliminary issue is found accordingly.

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