

Gracy Vs. Cleetus

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Court : Kerala

Decided On : Dec-04-2001

Reported in : I(2002)DMC401

Judge : R. Rajendra Babu, J.

Acts : [Divorce Act, 1869](#) - Sections 10A and 16

Appeal No. : O.P. (Divorce) No. 31496 of 2001 and C.M.P. No. 57169 of 2001

Appellant : Gracy

Respondent : Cleetus

Advocate for Def. : M.K. Murrari,; Denizen Komath and; E.M. Joseph, Advs

Advocate for Pet/Ap. : T.O. Xavier and; George James, Advs.

Disposition : Petition allowed

Judgement :

R. Rajendra Babu, J.

1. The wife filed this O.P. for declaring her marriage with the respondent as null and void or, in the alternative, for dissolution of the marriage. It was alleged that the marriage between the petitioner and the respondent was solemnized on 31.12.1986 at the St. Antony's Church, Kannamaly, in accordance with the

religious rites of the Christian community. A child was born to them in the wedlock. Later the petitioner left for Gulf country seeking employment and used to visit only once in two years. During her return she was ill-treated and assaulted by the respondent. Later it was revealed that the respondent was living with another lady. So the petition was filed for declaring the marriage null and void on the ground of fraud in obtaining the consent of the petitioner or, in the alternative, for dissolution of the marriage.

2. Though the respondent entered appearance, no counter was filed.

3. Later, the parties filed a joint petition C.M.P. 57169/2001 for dissolution of their marriage on mutual consent under Section 10A of the Divorce Act. The petitioner and the respondent were examined before this court. Both of them had given evidence that they were residing separately for more than two years and there is no possibility of any reproachment and a decree for divorce has to be granted on mutual consent. I find no collusion between the parties and as such the joint petition can be allowed.

4. In O.P. 21040/98 this court has already found that a joint petition under Section 10A can be filed on a petition pending before this Court for dissolution of marriage. It was further found that in such a case a decree nisi alone can be granted, as, in view of Section 16 of the Divorce Act, every order for dissolution of marriage passed by this Court shall be decree nisi. It was also held that the waiting period of six months can be waived. In view of the above decision, the marriage between the petitioner and the respondent can be dissolved by a decree nisi on the petition under Section 10A of the Act waiving the waiting time of six months.

5. In the result C.M.P. 57169/2001 is allowed. The marriage between the petitioner and the respondent solemnized on 31.12.1986 at the St. Antony's Church, Kannamaly, is dissolved by a decree nisi.