

A.B. Manual Vs. Mrs. Libian Margaret Manual and anr.

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Court : Chennai

Decided On : Feb-11-1969

Reported in : AIR1970Mad178

Judge : M. Anantanarayanan, C.J., ;Ramakrishnan and ;Natesan, JJ.

Acts : [Divorce Act, 1869](#) - Sections 7 and 10

Appeal No. : M.C. No. 1 of 1967

Appellant : A.B. Manual

Respondent : Mrs. Libian Margaret Manual and anr.

Advocate for Def. : V.T. Gopalan and ;M.S. Krishnamachari, Advs.

Advocate for Pet/Ap. : G. Krishnan and ;K. Sampath, Advs.

Judgement :

M. Anantanarayanan, C.J.

1. This is a case referred under Section 10 and Section 17 of the Indian Divorce Act, IV of 1869, by the learned District Judge of South Arcot, for confirmation of the decree nisi dissolving the marriage. The facts are simple. The petitioner and the first respondent were married, according to the rites of the Christian religion, on 8th August 1951, at the Royapettah Purification Church, Madras. They lived together as husband and wife from 1951 till 30th September 1964. The petitioner

had taken up employment in the Neiveli Lignite Corporation and, they were living together at that place. According to the sworn testimony of the petitioner (P. W. 1) on 30th September 1964, his wife informed him that she was no longer willing to live with him in matrimony, and, she left his house and deserted him. Thereafter, according to the petitioner, the first respondent and the second respondent were openly living together as husband and wife in a village near Neiveli. In his evidence, the petitioner gives the actual address, viz., 15/1 Gangaikondan colony.

2. The respondents were ex parte, and did not contest the application at any stage, in spite of summonses taken out several times, and publication in a daily newspaper of Madras. The learned District Judge accepted the evidence of P. W. 1, as Proving the fact of adultery between the first respondent and the second respondent, recorded a finding that there was no collusion between the parties, and granted the decree dissolving the marriage subject to Our confirmation. '

3. We have been exercised by the fact that the evidence of the petitioner (P. W. 1) stands alone, and uncorroborated. It is true that, under the Indian Evidence Act, no particular quantum of evidence is legally required for proof of a fact, and the Court can accept and act upon uncorroborated evidence of a witness, Under Section 7 of Act IV of 1869, the practice of our Courts, in such matters, has been approximated to the practice of the Matrimonial and Divorce Courts in the United Kingdom, as far as practicable. There are authorities to the effect that the evidence of the husband should be corroborated by some other evidence, if this is at all feasible, or at least, by the circumstantial evidence of surrounding probabilities.

4. In the present case, the evidence of the husband is not corroborated by that of any other witness, but, it is noteworthy that the husband has given explicit information about the particular address at which the two respondents are jointly living together, in adultery, after the first respondent had deserted the petitioner. That direct evidence is corroborated by the circumstantial evidence of the returns on the summonses, available in the record. We have scrutinised this aspect, and we find one return made by the second respondent and signed by him, in which he explicitly states that the first respondent was, at the time of the service of the

summons, staying with her mother elsewhere, and that she had earlier left him (second respondent). This relates to the address of the second respondent, as given by the petitioner, and, it is powerful corroboration, as circumstantial evidence of the averment of the petitioner, on oath, that the first and the second respondents had been living together as man and wife at that given address. In this case, we are, therefore, relying both on the evidence of P. W. 1 and on the corroboration by circumstantial evidence, that we have referred to, as an adequate basis for acceptance of the evidence. Nevertheless, we must sound a note of caution that, in all such cases, the mere fact that the respondents did not care to contest the proceeding and remained ex parte, is no justification for the Court to treat the proceeding as purely formal and to act upon the evidence of the plaintiff or petitioner, uncorroborated, as though it were evidence given by the plaintiff in a civil proceeding in which the defendant had remained ex parte. It should be unnecessary for us to point out that this is not a mere civil proceeding, where an adjudication of rights as between two parties alone is involved; this is a proceeding relating to the status of matrimony, and it involves the interests of society, as well as the interests of the concerned individuals. For that reason, the Court must never act in a purely formal sense, in such proceedings, and the finding that the Court is satisfied that there is no collusion between the parties should not also be a mere mechanical inference or conclusion. Having said all this, we may state that, in the present case, we are satisfied that the ground for dissolution was proved by adequate evidence, circumstantial and direct, and that, there has been no collusion between the parties. Accordingly we accept the reference and confirm the decree for dissolution. No costs.