

C. Solomon Vs. Josephine

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Court : Chennai

Decided On : Sep-08-1958

Reported in : AIR1959Mad151

Judge : P.V. Rajamannar, C.J., ;Ramachandra Iyer and ;Ganapatia Pillai, JJ.

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

Appeal No. : Case Referred No. 91 of 1957

Appellant : C. Solomon

Respondent : Josephine

Disposition : Petition dismissed

Judgement :

1. The petitioner is the husband. He was married to the respondent in accordance with Christain rites on 18-6-1951 at Mayuram. On 2-1-1957 the husband filed a petition under Section 18 of the Indian Divorce Act for a decree declaring that his marriage with the respondent was null and void on the ground that the respondent was a lunatic and idiot even from prior to the marriage.

Under Section 19 of the Act one of the grounds on which a decree of nullity of marriage can be made is that either party was a lunatic or idiot at the time of the marriage. In the petition the petitioner alleged that she was a lunatic even at the time of the marriage and continued to be so. When summons went to the

respondent, she did not appear but she sent a communication to the court. Admittedly this communication is signed by the respondent.

In this she stated that the allegations contained in the 'petition were false and were made by the husband with the intention of marrying another woman after he was free, that she was not of unsound mind, that the husband used to heat her on several occasions and torture her and hence she ran away to her mother's house and that he is living with another girl. She was afraid that there would be danger to her life if she were taken by him again,

She concluded this letter praying to the court that some provision may be made for her living. At the trial she was ex parte; but the learned District Judge of East Tanjore who was trying the petition appointed an advocate as her guardian. The guardian unfortunately was not able to get into touch with the respondent. So he was content to file a counter-statement putting the petitioner to proof of the allegations made by him.

He also cross-examined the two witnesses examined on behalf of the petitioner. The first was the petitioner himself. In the chief-examination he stated that he and the respondent lived as husband and wife and that she became insane and began to roam about. He added however that she had been in that condition from the time of the marriage.

When he was recalled subsequently he developed his case by saying that at the time of the marriage he was told that she was suffering from hysteria but that she would be all right after her marriage. His version is that it was common ground that she was mentally unsound even at the time of the marriage but she was married in the hope that she would improve.

One Aroghyammal, a distant relation is said to have negotiated and fixed up the marriage; hut she was not called. In cross-examination the petitioner stated that she began to run away within 15 days after the marriage. The statement that the respondent attended training class and failed and thereafter she became mentally unsound probably refers to a period before the marriage.

If so, it was mere hearsay because the petitioner admitted that he did not know the respondent nor her family before. Admittedly for over six years the petitioner and respondent had lived as husband and wife and there are two children of the marriage. The first child was four years at the time of the trial and the second 2 1/2 years.

The second witness for the petitioner is a neighbour. According to him, the respondent used to run away from the house and was brought back by the petitioner and his people. He however admitted in cross-examination that he had not seen her running away but he had seen her only being brought back. He made a significant admission, that for about one or two months after the marriage the respondent was all right and that when he attended the marriage she was then all right.

On this evidence we find it impossible to hold, that the respondent was a lunatic or idiot at the time of the marriage. We are not concerned here with her mental state at the time of the petition or at the time of the trial because even if the respondent was a lunatic or idiot at either of these times, that fact would not be a ground for a declaration that the marriage is null and void.

2. The learned District Judge in paragraph 8 of his judgment has expressed the view that 'in a case like this, where the circumstances disclosed do not lead to any inference of the possibility of a happy married life, the court has to take a reasonable and generous, and not a rigid, view of the evidence.'

This view is opposed to the fundamental principle of the law relating to divorce as it obtains in this country, under the Indian Divorce Act. The basis of the several provisions in the Indian Divorce Act is that mere incompatibility between spouses or the prospect of an unhappy married life cannot be a valid ground either for divorce or for a declaration that the marriage was null and void.

3. There is another aspect which the learned District Judge appears to have completely overlooked and that is this. The petition was not for a dissolution of the petitioner's marriage with the respondent. It was for a declaration that the marriage itself was ab initio null and void. The inevitable result of such a declaration would

be in this case to bastardise the two children admittedly born to the petitioner and the respondent when living together as husband and wife.

If extraneous circumstances ought to have any bearing on the decision of a petition under any of the provisions of the Indian Divorce Act, we think that the prospect of rendering two children born in apparently lawful wedlock illegitimate is far more serious than the possibility of an unhappy married life.

4. On the evidence we have no hesitation in holding that the petitioner has not established his case that the respondent was a lunatic or idiot at the time of the marriage. As the petition was founded on this allegation, it must fail. The petition is therefore dismissed.

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