

Vathsala Vs. N. Manoharan

Vathsala Vs. N. Manoharan

SooperKanoon Citation : sooperkanoon.com/795155

Court : Chennai

Decided On : Feb-16-1968

Reported in : AIR1969Mad405; (1969)1MLJ402

Judge : Veeraswami, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 12

Appeal No. : Civil Revn. Petn. No. 51 of 1967

Appellant : Vathsala

Respondent : N. Manoharan

Advocate for Def. : N. Srivatsamani, Adv.

Advocate for Pet/Ap. : K. Gopalachari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Veeraswami, J.

1. This is rather a peculiar case. The petitioner instituted an original petition for a declaration that her marriage with the respondent in this court was a nullity because of his impotency. A decree for nullity was eventually granted, but ex

parte. The petitioner and her father had given evidence and there was also the report of the Medical examination of the respondent. That was the basis on which the ex parte decree was made. The respondent filed an application to set aside the ex parte decree, and at the same time, also filed an appeal from the order. The appeal had been withdrawn. But the court below has set aside the ex parte decree, it being of opinion that sufficient cause for the absence of the respondent was made out. In the meantime, relying upon the decree declaring the marriage to be a nullity, the petitioner contracted a second marriage. The petitioner pressed before the Court below that the respondent's application for setting aside the ex parte decree became for that reason infructuous. The Court below declined to accept that view.

2. In my view the Court below was right. But learned counsel for the petitioner refers me to *Mohanmurari v. Kusamkumari*, : AIR 1965 MP194 , and contends that at the time the second marriage was contracted, the decree for nullity was in force and therefore, it was a valid marriage. He says if that be so, the pendency of the application to set aside the ex parte decree could not invalidate it and adds that if the respondent wanted to prevent the second marriage, he should have appealed to the Court below for a prohibitory order against the petitioner and that having not been done, the application for setting aside the ex parte decree should have been dismissed. It is true that the decision relied upon by the petitioner goes a long way to support her. But, with great respect, I am unable to concur in that view. What appears to me is that when an order of nullity of marriage is made and the law allows an appeal as well as an application to set aside an ex parte order and actually these remedies have been resorted to, any act of the parties pending final disposal of those remedies availed of cannot have the effect of rendering them infructuous, so to speak. Where such remedies are provided from an order, the order should be taken to be valid and in force, but only subject to the result of the application to set aside the ex parte order or the result in the appeal. To hold otherwise would mean that by an act of the party, he can successfully defeat the lawful remedy accorded to the aggrieved person. It is true the filing or pendency of an application to set aside an ex parte decree or an appeal does not work as an automatic reversal of the order. But once an application is allowed and the ex parte order is set aside, the order passed in such an application re-opens the trial,

or if the appeal is allowed, the order made in the appeal should be taken to be the order that should have been passed at the trial. That is the principle of Smt. Chandra Mohini v. Avinash Prasad, AIR 1967 SC 581. The principle laid down in that decision has general application. The Supreme Court pointed out that on dissolution of marriage, a spouse can law-fully marry only when there is no right of appeal against the decree dissolving the marriage or if there is a right of appeal, the time for filing of an appeal has expired or the appeal presented has been dismissed.

3. The petition is dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com