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Court : Chennai

Decided On : Jul-29-1913

Reported in : 30Ind.Cas.413

Judge : Wallis, J.

Appellant : J.S. Battie

Respondent : G.E. Brown, Falsely Called G.E. Battie

Judgement :

Wallis, J.

1. This is a case of a very unusual character, in which the petitioner seeks a declaration of the nullity of the marriage which he contracted with the respondent in the year 1891, on the ground that the marriage was null and void as having been contracted within six months of the date on which a decree absolute had been passed dissolving the earlier marriage of the respondent. Now I may observe that this marriage was performed by license.' 1 do not know if the authorities issuing the license were aware that the previous marriage of the respondent had been so recently dissolved, but if they were so aware, clearly the license ought not to have been issued, and this case illustrates the necessity that the licensing authority, when it is brought to its notice that the marriage of one of the parties has been dissolved, should satisfy itself, before issuing the license, that the marriage had been dissolved by a decree absolute six months before the celebration of the

new marriage; and it is, of course, equally incumbent on ministers of religion and others who solemnize such marriages so to satisfy themselves. The present suit is unopposed and, therefore, may be taken to be really by consent. But it is easy to conceive what serious and lamentable results might follow from carelessness of this kind. However, in the present case the only thing I have to do is to see whether the petitioner has made out a case for the declaration of nullity which he prays for. Now the prohibition in Section 57 of the Divorce Act against re-marriage within six months of the making of the decree absolute, or the determination of an appeal if one has been preferred, is express and differs very little from the similar statutory provision of the English Law, The English section has been held to render a marriage contracted in defiance of its provisions void as in *Chichester v. Mure* 3 Sw. & Tr. 223 : 11 W.R. 990 cited by Mr. Chamier and the Indian section has been construed in the same way by Sir James Hannen in *Warier v. Warier* (1890) 15 P.D. 152 : 59 L.J.P. 87 : The question there was as to the validity of a Will and not as to declaration of nullity. But there is an exactly similar decision to this of Chamier, J., in *Jackson v. Jackson* 13 Ind. Cas. 958 The only difficulty I felt in regard to this case is not as to the nullity of the marriage which is forbidden in the plainest terms by Section 57, but as to the jurisdiction of this Court to pronounce a decree of nullity, because Section 19 which deals with the grounds upon which decrees of nullity may be pronounced gives, as one of the grounds, that the former husband or wife of either party was living at the time of the marriage, and marriage with such former husband or wife was then in force.' It strikes one, at first, as strange to talk of a marriage being in force' after it has been dissolved by a decree absolute; but as was pointed out in the case, by the earlier law as administered in the Ecclesiastical Courts marriage was indissoluble, and when marriages were dissolved by Act of Parliament, it was considered necessary to insert a special power of re-marriage, so that, as Sir James Hannen said, the result of pronouncing a decree absolute was not completely to dissolve a marriage. The Indian Law,' he says in a passage cited by Chamier, J., 'like our own, does not completely dissolve the tie of marriage until the lapse of a specified time after the decree.' In other words the former marriage is to be considered still in force at any rate to the extent of preventing a subsequent marriage during the life-time of the other party to such marriage until the prohibition resulting from the

survival of such other party is removed by virtue of the section. Now the prohibition is not removed by virtue of the section till the lapse of six months, or the happening of the other event therein mentioned. Consequently, I hold that not only was this marriage void on the date when it was solemnized, but also that the previous marriage was still 'in force' within the meaning of Section 19(4), so as to give me jurisdiction under Section 19 to pronounce a decree of nullity. I accordingly make the decree prayed for.

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