

In Re: Veerappa Goundan

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Court : Chennai

Decided On : Aug-19-1952

Reported in : AIR1953Mad1003; (1952)2MLJ749

Judge : Ramaswami, J.

Acts : Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 - Sections 5 and 5(5); Code of Civil Procedure (CPC) - Order 9, Rule 13 - Order 43, Rule 1

Appeal No. : S.R. No. 30122 of 1952

Appellant : In Re: Veerappa Goundan

Advocate for Pet/Ap. : P.S. Ramachandran, Adv.;D.L. Narasimharaju, Adv. for ;Govt. Pleader

Judgement :

ORDER

Ramaswami, J.

1. This matter comes up for orders on an office note in the following circumstances.

2. The facts are: S. R. No. 30122 is sought to be filed as a C. M. A. under Order 43, Rule 1(d), C. P. C. against the order of the Subordinate Judge's Court of Coimbatore passed in I, A. No. 1313 of 1951 in O. P. No. 112 of 1950 refusing to

set aside the ex parte order passed earlier in I. A. No. 414 of 1950 in the same O. P. This O. P. No. 112 of 1950 was filed under Section 5(1) of Madras Act 6 of 1949 for the dissolution of the marriage of the petitioner with the respondent therein. The learned Judge passed an ex parte order in I. A. No. 414 of 1950 under Section 5, Clause 7(a) of the Act making interim provision for the expenses of prosecuting the O. P. and maintenance of the petitioner. The respondent subsequently filed I. A. No. 1313 of 1951 under Section 151 and Order 9, Rule 13, C. P. C. for setting aside that order. This petition was dismissed. Therefore this S. R. has been filed seeking to have it numbered as C. M. A,

3. The point for consideration is whether this C. M. A. lies to the High Court either under Order 43, Rule I(d), C. P. C. or under Section 5, Sub-sections (4) and (5) of Act 6 of 1949?

4. Section 5(4) of the Act makes the provisions of the Civil Procedure Code applicable to all proceedings under Sub-sections (1) and (2) and Sub-section (5) provides for appeals to the High Court against any order passed on any such petition. It is obvious that the words 'any such petition' referred to in Sub-section (5) can be taken to refer only to the petitions presented under Sub-sections (1) and (2) mentioned in the preceding sub-section and these words cannot be pressed into service in order to make out that appeals have been provided for against orders passed on interlocutory applications in such petitions.

5. Then turning to Order 43, Rule I(d), C. P. C. it provides for an appeal against an order rejecting an application under Order 9, Rule 13 only if the order sought to be set aside is open to appeal. But inasmuch as no right of appeal against an ex parte order passed in I. A. No. 414 of 1950 has been provided for as mentioned in the previous paragraph, the order passed subsequently refusing to set aside that ex parte order cannot become the subject-matter of an appeal.

6. Thus, no appeal lies to the High Court either under Act 6 of 1949 or under Order 43, C. P. C., and only a civil revision petition has got to be filed as has been the practice till now in regard to orders passed on interlocutory applications in petitions filed under Act 6 of 1949.] In case an appeal is held to lie to the High Court, in these circumstances, the court-fee payable will be Rs. 10 under Section 5(6) of the

Act and cannot in any event be the court-fee of Rs. 2 for a C. M. A. This does not however arise in view of my holding that only a civil revision petition can be filed. The office note is answered accordingly and it is left open to the party to take such steps as he may be advised to do in view of this answer to the office note. Petitioner to pay costs of Government Pleader Rs. 25.

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