

Rajesh Vs. Shiji

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Court : Kerala

Decided On : Sep-04-2012

Reported in : 2012(4)KLJ108; 2012(4)KLT311

Judge : Pius C. Kuriakose & Babu Mathew P. Joseph

Appeal No. : Mat.A. No. 211 of 2010

Appellant : Rajesh

Respondent : Shiji

Judgement :

Babu Mathew P. Joseph, J.

1. This appeal is directed against the order dated 20.11.2009 on O.P.No.406 of 2006 of the Family Court, Malappuram. By the impugned order, the learned Judge of the Family Court dismissed the O.P. filed by the appellant under Section 11 of the Hindu Marriage Act (for short 'the Act') for declaring the marriage between the appellant and the respondent as null and void.

2. Heard both the sides. The parties are admittedly Hindus by religion. Learned counsel for the appellant submits that even though the O.P. was styled as one preferred under Section 11 of the Act, it has to be treated as one filed under Section 11 read with Section 5(ii)(a), (b) and (c) of the Act. A plain reading of Section 11 of the Act would show that a petition under Section 11 read with

Section 5(ii)(a), (b) and (c) for declaring a marriage as null and void is not maintainable. Section 11 of the Act reads as follows:

"11. Void marriages.-Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of, nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

This Section shows that a marriage solemnised shall be null and void and may, on a petition presented by either party of the marriage against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. Therefore, contravention of any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 is necessary for attracting Section 11 of the Act for declaring a marriage null and void.

3. Section 5 of the Act reads as follows:

"5. Conditions for a Hindu marriage.-A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-(i) neither party has a spouse living at the time of the marriage;(ii) at the time of the marriage, neither party-(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or(c) has been subject to recurrent attacks of insanity;(i) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;(ii) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;(iii) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two."

A reading of Section 5(ii)(a), (b) and (c) clearly show that a marriage may be solemnised between any two Hindus if the conditions viz. (1) at the time of marriage neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind or (2) though capable of giving a valid consent, has been

suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children or (3) has been subject to recurrent attacks of insanity. So, unsoundness of mind or mental disorder or insanity of a party to a marriage as described under Section 5(ii) bars solemnising the marriage. But, the contravention of the conditions under clause (ii) of Section 5 is not prescribed as a ground for declaring a marriage null and void under Section 11 of the Act. For invoking Section 11 of the Act for declaring a marriage null and void, contravention of any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 is necessary. The condition to be fulfilled under clause (i) of Section 5 is that neither party should have a spouse living at the time of marriage, condition under clause (iv) is that the parties should not be within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two and the condition under clause (v) is that the parties should not be sapindas of each other unless the custom or usage governing each of them permits of a marriage between the two. Therefore, even if the petition filed by the appellant is treated as one preferred under Section 11 read with Section 5(ii)(a), (b) and (c) of the Act as submitted by the learned counsel for the appellant, such a petition is not maintainable and a relief of declaring the marriage null and void cannot be granted on the basis of such a petition. Hence, on this short ground alone the petition preferred by the appellant for declaring his marriage with the respondent as null and void is liable to be dismissed. But, we do not want to dismiss the petition preferred by the appellant on this technical ground.

4. Section 13(1) and clause (iii) under the same show that any marriage solemnised may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. The expressions mental disorder and psychopathic disorder are also explained under clause (iii) as (a) and (b). Therefore, the appellant is entitled to seek dissolution of marriage by a decree of divorce on the ground under clause (iii) of subsection (1) of Section 13.

5. The evidence in this case consists of the oral testimony of PWs.1 to 3 and Exts.A1 to A4 marked on the side of the appellant. RW1 was examined and Exts.B1 to B14 were marked on the side of the respondent. PW1 is the Professor of Psychiatry and Head of the Department of Psychiatry, Medical College, Kozhikode. PW2 is a Gynaecologist. PW3 is the appellant himself. The respondent was examined as R.W1. On a consideration of the evidence on record, the court below found that the case of the appellant was a false one. We have been taken through the evidence of the witnesses by the learned counsel for the appellant. The respondent was examined by PW1. She could not diagnose any mental illness. The evidence of PW2 is also not helpful to the appellant. Going by the evidence of the medical expert viz. PW1, it can be safely found that the appellant has miserably failed to prove a case against the respondent attracting clause (iii) of sub-section (1) of Section 13 of the Act enabling him to get a decree of divorce.

6. We have heard the detailed arguments of the learned counsel appearing on both the sides. We have gone through the impugned order. We have also reappraised the evidence made available. On an anxious consideration of the arguments and the evidence, we find no reason to interfere with the impugned order. Therefore, this appeal is liable to be dismissed.

In the result, this appeal is dismissed.

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