

(2006) 10 KL CK 0088

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27290 of 2006 (W)

Alungaprambil Abdul Khader Suhud

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:

Citation : (2007) 1 DMC 38 : (2007) 1 KLJ 20

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

**Advocate : P. Gopakumaran Nair, C.S. Das and Ajith Murali, for the Appellant;
Hood T.B., for the Respondent**

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The petitioner is a Muslim. He originally married one Mrs. Tahira. The said marriage was dissolved as per the procedure prescribed under the personal law of the petitioner on 27.12.2004. Now the petitioner desires to marry another lady and wants the marriage solemnized and registered under the provisions of the Special Marriage Act, 1954. Under the Special Marriage Act, a marriage cannot be registered under the Act if another spouse is living. Therefore, the Marriage Registrar insisted on production of a Court decree dissolving the earlier marriage for solemnization and registration of the petitioner's second marriage. According to the petitioner, a Muslim, as per personal law, need not get a decree from a Civil Court for a valid divorce of his wife and what he needs is only a certificate from the concerned Juma-Ath to the effect that divorce has been effected in accordance with the personal law. The petitioner has in fact filed Ext. P1 certificate to that effect issued by the Ernakulam Muslim Juma-Ath. The 2nd respondent Marriage Officer refuses to act on the same and insists on a decree from a Court of Law. This stand of the 2nd respondent is under challenge in this writ petition with a prayer for direction to him to solemnize and register the marriage of the petitioner in accordance with the Special Marriage Act.

2. I have heard the learned Counsel for the petitioner as also the learned Government Pleader.

3. Under Muslim personal law, a Muslim can validly divorce his wife without resorting to proceeding before a Civil Court or Family Court. I am of the opinion that the 2nd respondent cannot, under law, insist on production of decree of divorce of the earlier marriage for solemnizing and registering the 2nd marriage of the petitioner when the petitioner has produced adequate proof of divorce of the first marriage as required under Muslim personal law. Therefore, I am of the opinion that the 2nd respondent can act on the basis of Ext. P1 certificate issued by the Muslim Jama-Ath. Since the petitioner has submitted a declaration as Ext. P3, in which, it is specifically declared that the petitioner is a divorcee at present, I am satisfied that these formalities are sufficient for proving that the petitioner has in fact divorced his 1st wife. In the above circumstances, there would be a direction to the 2nd respondent to solemnize and register the marriage of the petitioner, accepting Exts. P1 and P3, if all other conditions under the Act are satisfied.

The writ petition is allowed as above.