
(2008) 11 MAD CK 0035
In the Madras High Court
Case No : Writ Petition No. 12816 of 1995

Indira Rachel

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Divorce Act, 1869 — Section 10, 11, 2

Citation : (2008) 11 MAD CK 0035

Hon'ble Judges : P.K. Misra, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : N.R. Chandran, V. Selvaraj, for the Appellant; M. Ravindran, A.S.G., Assisted by, Haja Mohideen Gisthi, ACGSC for R. 1, for the Respondent

Judgement

P.K. Misra, J.—Heard Mr. V. Selvaraj, learned Counsel for the petitioner, Mr. M. Ravindran, learned Additional Solicitor General for the

first respondent and Mr. N.R. Chandran, learned Senior counsel appointed as amicus curiae in the present writ petition.

2. Originally, the petitioner had prayed for declaration that Section 2, Section 10 and Section 11 of the Indian Divorce Act, 1869, hereinafter

referred to as Act, should be declared as unconstitutional, void and of no effect. However, it is stated by the learned Counsel for the parties that in

the meantime, Sections 10 and 11 of The Divorce Act, 1869 have been amended and therefore, it is not necessary for us to consider the said

aspect and the writ petition can be considered in so far as the validity of Section 2 of the Act is concerned.

3. Section 2 of the Act is extracted hereunder:

2. Extent of Act.- This Act extends to the whole of India except the State of Jammu and Kashmir

Extent of power to grant relief generally.- Nothing hereinafter contained shall authorise any Court to grant any relief under this Act, except where

the petitioner or respondent professes the Christian religion.

And to make decrees of dissolution.- or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India

at the time when the petition is presented,

or of nullity.- or to make decrees of nullity of marriage except where the marriage has been solemnised in India, and the petitioner is resident in

India at the time of presenting the petition

or to grant any relief under this Act other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in

India at the time of presenting the petition.

4. The learned Counsel appearing for the petitioner submitted that if Section 2 of the Act is given a literal interpretation, it would mean that the

courts in India will be unable to entertain the proceedings for dissolution of the marriage except where the parties to the marriage are domiciled in

India at the time when the petition is presented. He apprehends that if a literal meaning is given, it would mean that unless both the parties are

domiciled in India at the time of presentation of the petition, the Courts shall be unable to entertain such matter, which would result in grave

injustice to either of the parties and it would defeat the very purpose of the Act. To amplify the said submission, the learned Counsel for the

petitioner pointed out that if in a given case, either of the spouse migrates to another country on permanent basis and the question arises at that

stage, such party can be considered as "domicile" of a foreign country and therefore the party left behind in India would be left with no legal

remedy. The petitioner therefore prays that in order to avoid such difficulties, Section 2 of the Act has to be declared ultra vires.

5. Though the provisions of the Act can be interpreted in a literal manner, to conclude that both parties must be domiciled in India at the time of

presentation of the petition, in our considered view, to effectuate the present intention of the Act, which had come into force in the year 1869,

possibly, when such contingencies were not in contemplation, a purposive interpretation can be given to make it reasonable and more consistent

with the principles enshrined in the Constitution. If the aforesaid provision is

construed to mean that a petition would be maintainable if at the time of presentation of the petition either party is domiciled in India, the difficulty projected by the petitioner would not arise and on the other hand, object can be achieved. Therefore, according to us, such provision should be interpreted to mean that the Courts in India shall be entitled to entertain petition for dissolution of marriage where either of the parties to the marriage is domiciled in India at the time when the petition is presented and such provision need not be construed as if both the parties must be domiciled in India at the time of presentation of the petition. In our considered view, such an interpretation would bring it in consonance with the philosophy of the Constitution. Moreover, we feel to suggest that in order to avoid any further controversy in the matter in different parts of the Country, the Ministry of Law, the first respondent, may consider the question of making suitable amendment to the provisions in so far as Section 2 of the Act is concerned in the light of other provisions, if any, containing similar laws relating to Divorce.

6. So far as the prayer relating to grant of decree of divorce is concerned, it is brought to our notice that the second respondent has expired in the meantime. Therefore, it is not necessary for us to consider the aforesaid aspect since such prayer has become infructuous.

7. We place on record our appreciation for the valuable assistance rendered by the learned Counsel for the petitioner, the learned Additional Solicitor General appearing for the first respondent and Mr. N.R. Chandran, learned Senior counsel appointed as amicus curiae.

8. Subject to the aforesaid observation, the writ petition is disposed of. No costs.