

(1999) 09 KAR CK 0005

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 164 of 1999

Joseph Varghese Cheeran

APPELLANT

Vs

Smt. Rosy Kurian Kannaikal

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Constitution of India, 1950 — Article 366
Divorce Act, 1869 — Section 17, 4
Family Courts Act, 1984 — Section 19 (1)
Karnataka Civil Courts Act, 1964 — Section 4

Citation : (2000) 1 DMC 107 : (2000) ILR (Kar) 1771 : (1999) 6 KarLJ 598

Hon'ble Judges : Mohamed Anwar, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri K. Narayana, for the Appellant; Sri Jose Olakkengil, for the Respondent

Judgement

G.C. Bharuka, J.—This appeal has been filed u/s 19(1) of the Family Courts Act, 1984 (in short "the Act") against the judgment and decree dated 5th December, 1998 passed by the Family Court, Bangalore, in M.C. No. 648 of 1994 dissolving the marriage between the contesting parties under the provisions of the Indian Divorce Act, 1869 (in short, "the Divorce Act").

2. On the other hand, the Family Court in purported compliance to Section 17 of the Divorce Act, has remitted the impugned decree of dissolution of marriage to this Court for confirmation by a three Judges Bench, which has been numbered as C.R.C. No. 31 of 1999.

3. Under the aforesaid circumstances, it has become imperative on our part to ascertain as to whether the present appeal can be held to be maintainable because otherwise in substance it will amount to sitting in appeal against the judgment of a three Judges Bench of this Court confirming or disapproving the decree of dissolution of marriage, which will be ex facie impermissible. Therefore, Section 17 of the Divorce Act requiring confirmation of decree of dissolution by a

three Judges Bench of this Court and the remedy of appeal provided u/s 19 of the Act to a Division Bench of this Court cannot stand together. As such either of the provisions has to give way to the other.

4. u/s 4 of the Divorce Act, the matrimonial jurisdiction can be exercised by the District Courts. But Section 17 thereof requires that the decree of dissolution of marriage passed by the District Judge shall be subject to confirmation by a Bench of three Judges of a High Court like ours. This Section reads thus:

"17. Confirmation of decree for dissolution by District Judge.--Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court".

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference, the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

Provided xxx xxx xxx. 5. Indian Divorce Act is an "existing law" under clause (10) of Article 366 of the Constitution of India. It was enacted with the object to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts the jurisdiction relating to matrimonial causes arising between the parties. This Act provides for substantive law touching upon the matrimonial rights and obligations of the parties as also the procedure and jurisdiction to be followed and exercised by the Courts for adjudication of the said rights and obligations. Chapters III and IV of the Divorce Act respectively sets out the grounds for seeking a decree of dissolution or nullity of a marriage.

6. Now let us have a glance on the provisions of the Family Courts Act, 1984. The relevant provisions of this Act may be extracted hereunder, which are:-

"2(d) "Family Court" means a Family Court established u/s 3.

3. Establishment of Family Courts.--(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,--

(a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population

exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) xxx xxx xxx xxx. 7. Jurisdiction.--(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceeding of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.--The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely.-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) xxx xxx xxx xxx. 8. Exclusion of jurisdiction and pending proceedings.--Where a Family Court has been established for any area,--

(a) no District Court or any subordinate Civil Court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section;

(b) xxx xxx xxx xxx; (c) xxx xxx xxx xxx; (d) xxx xxx xxx xxx. 19. Appeal.--(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974} or in any other law, an appeal shall lie from every

judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) xxx xxx xxx xxx. (6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

20. Act to have overriding effect.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act".

7. The Family Courts Act, as is clear from its preamble, has been enacted to provide for Family Courts with a view to promote conciliation, and to secure speedy settlement of, disputes relating to marriages and family affairs and the matters connected therewith. The provisions of this Act has been made applicable to all and sundry disputes pertaining to marital relationships irrespective of the religions professed by the parties to such disputes. Therefore, the procedural and remedial measures engrafted in the Family Courts Act applies equally to the persons professing even the Christian religion. That being so, in a decree of dissolution of marriage passed by the Family Court, like the impugned one, is very much subject to an appeal to this Court u/s 19 of the Family Courts Act.

8. On taking a bird's eye view at the Indian Legislations, one can locate various enactments touching upon the marital relationship of persons professing different religions, like the Indian Divorce Act, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim Marriages Act, 1939, Special Marriage Act, 1934 and Hindu Marriage Act, 1956. Under these Acts, provisions have been made for presentation of petitions and adjudication thereof by different Courts without having any strict unanimity either in relation to original forum or the appellate forum.

9. It is clear from the enactment history as also the statement of objects and reasons of the Family Courts Act that it has been brought on the statute book keeping in view the long standing demands of women and social organisations as also 59th report (1974) of the Law Commission of India. Moreover Article 44 of the Constitution of India directs the State to make all endeavours to secure for the citizens a uniform Civil Code throughout the territory of India. This enactment certainly ensures a step-in-aid towards achievement of the said directive principle as set out in Part IV of the Constitution, at least in providing a common procedural law, for adjudicating matrimonial matters throughout the territory of India (except the State of Jammu and Kashmir) without carving out any exclusion based on religion, caste or community.

10. Under the Indian Divorce Act, petition seeking decree of divorce has to be presented before the District Court which for the State of Karnataka could only mean the District Court established u/s 4 of the Karnataka Civil Courts Act, 1964. u/s 17 of the said Act, if a decree of such a nature has been passed by a District

Judge then it requires to be confirmed by a three-Judges Bench of High Court. But under the Family Courts Act petition for dissolution of marriage has to be presented before the Family Court as established u/s 3 of the Family Courts Act and any such decree passed by the Family Court attains the finality without requiring confirmation from any higher forum but subject to an appeal before the High Court u/s 9 of this Act.

11. In Section 20 of the Family Courts Act, the Parliament has clearly manifested its intention to give overriding effect to the provisions of this Act over any other law which was in existence at the date of commencement of this Act. Further, Section 8 of this Act excludes the jurisdiction of all Courts other than the Family Courts in respect of suits and proceedings of the nature referred to in the explanation to Section 7(1) of the Family Courts Act. Therefore, as has rightly been done in the present case, petition for divorce was presented before the Family Court, which has passed the impugned decree of dissolution of marriage.

12. For the aforesaid reasons, since the impugned judgment and decree of dissolution of marriage has been passed u/s 17 of the Family Courts Act and not under the Divorce Act, the requirement of confirmation by the High Court as postulated u/s 17 of the Divorce Act cannot have any application and therefore reference made to this Court by the Family Court being C.R.C. No. 31 of 1991 was unwarranted and impermissible.

13. For the aforesaid reasons, we hold that the present appeal is maintainable u/s 19 of the Family Courts Act and consequently the reference before the Full Bench is declared as infructuous.

14. The Registrar (General) to ensure immediate circulation of copies of this judgment to all the Family Courts.

Per Mohamed Anwar, J.

While respectfully agreeing with the conclusion of my learned brother, I would like to add my view that the Family Courts Act does not in any manner whatsoever affect or encroach upon the substantive rights and liabilities of the parties to the marital disputes conferred on or created against them under the various special enactments referred to at para 8 hereinabove viz., Indian Divorce Act, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim's Marriage Act, 1939, Special Marriage Act, 1934 and the Hindu Marriage Act, 1956. To make it more clear, Family Court has merely provided for a uniform remedial measure for resolution of the said disputes.