
(1996) 04 MAD CK 0040
In the Madras High Court
Case No : Matrimonial Cause 10 of 1995

Vermonica Banumathi Francis

APPELLANT

Vs

John Duraiswami Francis

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Divorce Act, 1869 — Section 10

Citation : AIR 1997 Mad 337 : (1996) 1 LW 750

Hon'ble Judges : Srinivasan, J;S.M. Abdul Wahab, J;Ar. Lakshmanan, J

Bench : Full Bench

Judgement

Srinivasan, J.—It is very interesting case, in which the parties have married admittedly three times. The petition is filed by the wife against her

husband. According to the address given by the petitioner in the original petition, the respondent is living away in Sri Lanka. The petitioner has also

stated that she was serving as senior Head Nurse in Muscat at the time of filing of the petition. According to the petitioner, she married the

respondent in accordance with Hindu custom on 7-11-1985 at Thiruchi KumaraVayalur temple. Again the petitioner converted into a Christian

and got married in a Church at Ulsoor, Bangalore on 30-11-1985. For the third time, the parties chose to effect a marriage under the provisions of

the Special Marriage Act on 13-12-1985 at Thiruchi.

2. It is seen from the records that the notice in the original petition had not been returned as served. A letter would appear to have been written to

the District Judge by the respondent, which was mentioned by the District Judge on the docket of the petition on 7-4-1994. The endorsement

made by the District Judge is,

Letter received from the respondent by Post. Postal ack.

For appearance of petitioner 10.6.

On 11-6-1994, the learned District Judge made the following endorsement:

In view of the correspondence made by respondent to this Court, it is obvious that notice to the respondent is sufficient. Respondent called absent

and set ex parte. Petitioner examined as P.W. 1. Exs. A-I to A-6 marked. Heard the counsel for the petitioner. For orders 24-6-1994"".

Thereafter, a decree was passed by the District Judge.

3. Learned Counsel for the respondent has produced before us a copy of the letter dated 1-8-1993. According to the learned Counsel, the letter

which was sent to the District Judge by the respondent is only the original of this letter and we find in the said letter that it is requested by the

respondent specifically that is the event of any divorce petition being filed by the respondent's wife, a copy of the same shall be sent to him to the

address mentioned in the letter. The address given in the letter is as follows :--

John Francis,

MOD (PA Directorate)

P.O.Box 113, Muscat

Sultanate of Oman"".

Though the endorsement made by the District Judge on the docket of the petition makes a reference to the letter, it is not found among the records

sent to this Court. In the judgment of the District Judge, it is stated as follows :--

In this present O. P. No. 17/92 notices were taken for service to the respondent in more than one occasion; but on no occasion notice was

served on the respondent at Colombo, However, the letter and other complaints sent by the respondent to the petitioner and authorities which are

marked herein show that the respondent knows this present proceeding and was wantonly evading the receipt of notice. Therefore, it can be taken

that the service of notice on the respondent is sufficient. Accordingly this Court passed an order on 10-6-1994 setting the respondent ex parte.

4. The above passage in the judgment is not in accordance with the endorsement made by the District Judge on the docket of the petition. In that

endorsement, there is no reference whatever to the other correspondences referred to in the judgment. The endorsement refers to only the

correspondence between the respondent and the Court. The only correspondence that is mentioned in the docket is a letter said to have been

received on 7-4-1994 by the District Judge. The District Judge ought to have kept the said letter on file and marked as a Court's exhibit, if the

Court wanted to rely on the same for holding that service was sufficient. In the absence of any letter among the records, we have no reason to

accept the statement of the District Judge that the service of notice on the respondent in this case is sufficient. We have to hold that there is no

material on record to prove service of notice in the original petition on the respondent. Hence, we hold that the respondent has not been served

and that the decree have been passed without service of notice on the respondent, Hence, the decree has to be set aside.

5. We must also record that a question has been raised by the respondent's counsel as to the maintainability of the petition under the provisions of

the Indian Divorce Act. According to him, the marriage having been performed between the parties under the provisions of the Special Marriage

Act for the third time and that marriage being the last one subsisting as between the parties, the petition under the Indian Divorce Act is not

maintainable. That question can be raised by the respondent before the District Judge. The respondent's counsel is requested to advise his client to

enter appearance in the original petition without waiting for any notice from Court.

6. The decree passed by the District Court is set aside. Original Petition is remanded to the file of the District Judge, Thiruchirappalli, for fresh

disposal in accordance with law. A fresh notice be issued to the respondent by Court in accordance with the procedure prescribed by law. It is

open to the respondent, in the meanwhile, to enter appearance in the original petition. There will be no order as to costs.

7. Order accordingly.