



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 20TH DAY OF SEPTEMBER 2023 / 29TH BHADRA, 1945

WP (C) NO. 30787 OF 2023

PETITIONERS:

- 1 ANTONY JOSEPH, AGED 69 YEARS,
S/O VARGHESE JOSEPH, KURICHIAPARAMBIL,
KADUTHURUTHY P.O., KADUTHURUTHY,
KOTTAYAM, PIN - 686604.

- 2 KUNJAMMA ANTONY, W/O ANTONY JOSEPH,
KURICHIAPARAMBIL, KADUTHURUTHY P.O.,
KADUTHURUTHY, KOTTAYAM, PIN - 686604.

BY ADV SAJEEV KUMAR K.GOPAL

RESPONDENT:

THE SUB REGISTRAR (THE MARRIAGE OFFICER),
OFFICE OF THE SUB REGISTRAR, KADUTHURUTHY P.O.,
KOTTAYAM, PIN - 686604.

BY ADV.SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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C.R.

JUDGMENT

The petitioners impugn Ext.P5, whereby, the request made by their son - Sri.Joby Antony, to marry under the Special Marriage Act, has been rejected on the ground that there are no sufficient materials to show that he and his proposed bride are single, or without a living spouse, so as to satisfy the rigour of Section 8 of the Special Marriage Act ('Act', for short).

2. Sri.Sajeev Kumar K.Gopal - learned counsel for the petitioners, vehemently argued that the petitioners have placed on record Exts.P1 and P4 documents, to establish that both the groom and bride had been earlier married, but obtained divorce from their respective spouses; and are, therefore, presently single and without living spouses. He explained that, however, this has not been accepted by the



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respondent - Sub Registrar, but that he issued the impugned Ext.P5 order merely saying that, unless both the groom and the bride are able to show that their respective divorces were obtained on mutual consent, it cannot be acted upon. He contended that this reason in Ext.P5 is not merely illegal, but wholly untenable.

3. Smt.Vidya Kuriakose - learned Government Pleader, in response, submitted that Ext.P5 appears to have been issued by the respondent only because he was not favoured with enough information to be convinced that the groom and bride are both now without living spouses. She submitted that, going by Exts.P1 and P4, it is not clear as to the nature of divorces obtained by them; and that it is, therefore, perhaps that the respondent has issued Ext.P5. She, however, left it to this Court to issue appropriate orders and submitted that respondent will abide



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by the same.

4. I have examined the afore rival submissions, on the touchstone of various materials available on record, particularly Exts.P1 and P4.

5. *Prima facie*, Exts.P1 and P4 appear to be the orders obtained by the proposed groom and bride from the Authorities/Courts in the United Kingdom, which indicates that both of them have obtained divorces from their respective earlier spouses. Going by the mandate of Section 8 of the 'Act', it only requires the parties to satisfy the Registering Authority that they have no living spouses at the time when the application is made and the marriage is registered. Therefore, the only aspect to be decided by the respondent is this and nothing more.

6. However, when one reads Ext.P5, as



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rightly argued by Sri.Sajeev Kumar K.Gopal, the respondent appears to have misunderstood the ambit of Section 8 of the 'Act', in recording that, unless the bride and groom are able to prove that they had obtained their respective divorces by mutual consent, it cannot be accepted. This opinion cannot be countenanced by this Court since it fall foul of the forensic scheme, because no law mandates that all divorces have to be obtained by 'mutual consent'. It is not the nature of the divorce which is relevant, but the factum of such having been obtained by the parties to the intended marriage validly.

In the afore circumstances, I order this writ petition and set aside Ext.P5; with a consequential direction to the respondent to reconsider the application preferred by the proposed groom on the touchstone of all relevant



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materials, including the originals of Exts.P1 and P4; and if he is satisfied that said documents establish that the parties to the applied marriage are without living spouses at this time, he will accede to the request for marriage in terms of law and ensuring compliance of all other imperative requirements, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

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APPENDIX OF WP(C) 30787/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DECREE ABSOLUTE DATED 26-01-2022 IN CASE NO.ZZ21D43714 OF THE FAMILY COURT SITTING AT THE COURTS AND TRIBUNALS SERVICE CENTRE, U.K.
- EXHIBIT P2 TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE SUBMITTED BY JOBY ANTONY AND FEMILA ELSA JOLY BEFORE THE RESPONDENT DATED NIL
- EXHIBIT P3 TRUE COPY OF THE ACKNOWLEDGEMENT CUM RECEIPT FOR SPECIAL MARRIAGE DATED 05-09-2023 ISSUED BY THE REGISTRATION DEPARTMENT
- EXHIBIT P4 TRUE COPY OF THE FINAL ORDER OF DIVORCE IN CASE NO.1651-2296-9017-5364 DATED 03-03-2023 ISSUED BY THE FAMILY COURT, HM COURTS AND TRIBUNAL SERVICES
- EXHIBIT P5 TRUE COPY OF THE COMMUNICATION FROM THE RESPONDENT TO SRI.JOBY ANTONY VIDE C45(I)/2022 DATED 12-09-2023
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN ARUN A VS. MARRIAGE OFFICER REPORTED IN 2023 KHC 9101