

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAT. APP. 116/2010

Judgment delivered on: 13.12.2010

SANGEETA

..... Appellant

Through: Mr. Manoj Kumar Srivastava,
Advocate.

Versus

PRESTON GOMES

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under Section 28 of the Hindu Marriage Act, 1955, r/w Section 151 of the CPC, the appellant seeks to challenge the order dated 13.8.2010

passed by the learned Additional District Judge, whereby the divorce petition filed by the appellant under Section 13(1) (ia) of the Hindu Marriage Act was dismissed on the ground that one of the parties is not a Hindu.

2. Assailing the order dated 13.8.2010, counsel for the appellant states that merely because the appellant did not plead in the petition that the respondent was Hindu on the date of solemnization of the marriage would not result in dismissal of her petition. Counsel also submits that the appellant had married the respondent according to Hindu rites and ceremonies in Arya Samaj Mandir and this by itself shows that the respondent was Hindu as on the date of solemnization of her marriage. In support of his arguments, counsel has placed reliance on the judgment of the Apex Court in ***M. Chandra Vs. M. Thangamuthu, 2010 (9) SCALE.***

3. I have heard learned counsel for the appellant.

4. It would be relevant to set out the Preamble and Section 2 of the Hindu Marriage Act which deals with the applicability of the said Act is reproduced as under:

Preamble:

"An Act to amend and codify the law relating to marriage among Hindus"

.....

2. Application of Act

(1) This Act applies

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed."

5. Clearly, Hindu Marriage Act is not applicable either to Muslim, Christian, Parsi or Jews as would be borne out from Section 2 of the Hindu Marriage Act.

6. Section 5 of the Hindu Marriage Act prescribes conditions for Hindu Marriage. The same is reproduced as under:

“Conditions for a Hindu marriage

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely,-

(i) neither party has a spouse living at the time of the marriage;

¹[(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity ²[***]

(iii) the bridegroom has completed the age of ³[twenty-one years] and the bride, the age of ⁴[eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;”

7. As per Section 5 the marriage can be solemnized only between two Hindus subject to fulfillment of the

conditions laid in the said Section. Definition of Hindu has been given in Section 2 of the Hindu Marriage Act as referred above. Here it would also be pertinent to refer to the Hindu Marriage Rules of this High Court 7(b) & 7(c) which are as under:

Rule 7. Contents of petition.-In addition to the particulars required to be given under Order VII, Rule 1 of the Code and Section 20(1) of the Act, all petitions under Sections 9 to 13 shall state:

.....
(b) whether the petitioner and the respondent were Hindu by religion at the time of marriage and whether they continue to be so upto the date of filing of the petition;

(c) the name, status and domicile of the wife and the husband before the marriage and at the time of filing the petition;

(d)"

Hence it would be manifest from above that it is imperative to prove that both the parties were Hindus at the time of the solemnization of marriage. Here it would be useful to refer to the division bench judgment of the Bombay High Court in the case of ***Dr. Abdur Rahim Undre vs. Smt. Padma Abdur Rahim Undre AIR 1982 Bom 341*** where it was observed as under:

"Thus it appears that for a conversion there should be a declaration of one's belief and the said declaration should be in such a way that it should be known to those whom it may interest. If a public declaration is made by a person that he has ceased to belong to one religion and is accepting another religion, he will be taken as professing the other religion.

.....

*Thus in case of a conversion there should be a change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion. If a ceremony of conversion is gone into conscientiously after such an honest conviction, then alone there is a conversion of faith or it can be said that a person is professing another religion. **In case of conversion from one religion to another a strict proof is required and it cannot be easily inferred.** More so when a person converted denies even the factum of conversion. As to whether there in fact a conversion or not must depend on facts and circumstances of each case and not general rule can be laid down in that behalf."*

It would be evident from the aforesaid observations that that the Hon'ble Division Bench of Bombay High Court laid emphasis as to the requirement of a strict proof and that the conversion from one religion to another not to be easily inferred.

8. Now coming to the facts of the case at hand, in the present appeal, the respondent as his name suggests, is a Christian. Nowhere in the petition the appellant has disclosed that prior to solemnization of the marriage on

24.11.2007, the respondent had converted himself into Hindu religion. In the petition also the appellant has not stated that the parties were Hindus on the date of solemnization of their marriage. Mere fact that the parties had solemnized the marriage as per the Hindu rites and ceremonies would not attract the applicability of the Hindu Marriage Act as the mandate of the law is that marriage has to take place between two Hindus.

9. It is a well known principle of civil law that a person born into or following one religion continues to belong to such religion subject to conversion to another religion. Conversion to another religion basically requires change of faith; it is essentially a matter of conviction. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. The conversion from one religion to another religion is a very major decision in one's life and for proving such a conversion, it is incumbent upon the appellant to

place on record complete facts and documentary material, if any, to satisfy the court that based on such facts and supporting material, the appellant had undergone change of religion. Change of religion cannot be believed merely on vague oral allegations unsupported by any documentary or uncorroborated oral evidence. In the absence of any averment made in the present petition, I do not find any infirmity or illegality in the order of the learned trial court.

10. The judgment of the Apex Court in ***M. Chandra's case (Supra)*** as cited by the counsel for the appellant is not applicable to the facts of the present case as in the said case the Apex Court while dealing with the Representation of the People Act, 1951 defined the expression 'Hindu' in broader terms.

11. In the light of the foregoing, there is no merit in the present appeal and the same is hereby dismissed.

December 13, 2010
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KAILASH GAMBHIR, J