

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 39885 of 2015 (I)

PETITIONER(S):

- 1. MOLLY ABRAHAM, D/O. ABRAHAM,
AGED 52 YEARS, PARAPPANNATTU HOUSE,
AREEKARA, VELIYANNOOR P.O., KOTTAYAM DISTRICT.**
- 2. JOSEPH THOMAS, S/O. MATHAI JOSEPH,
AGED 62 YEARS, 222 E, PHILLIPS ROAD,
APT # 3, ANGELTON, TEXAS,
TX 77515 - 7300, UNITED STATE OF AMERICA.**

BY ADV. SRI.JAMES KURIAN.

RESPONDENT(S):

**THE MARRIAGE OFFICER,
(UNDER THE SPECIAL MARRIAGE ACT)/
THE DISTRICT REGISTRAR (AUDIT),
OFFICE OF THE DISTRICT REGISTRAR (AUDIT),
KOTTAYAM - 686 001.**

BY GOVT. PLEADER SMT.C.K. SHERIN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 39885 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P-1: COPY OF THE NOTICE OF INTENDED MARRIAGE DATED 20.11.2015.

**EXT.P-2: COPY OF THE FINAL DECREE OF DIVORCE DATED 04.06.2010 OF
THE DISTRICT COURT, 387, JUDICIAL DISTRICT, FORT BEND COUNTY,
TEXAS.**

**EXT.P-3: COPY OF THE LETTER NO.429/2015 DATED 25.11.2015 ISSUED BY
THE RESPONDENT.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.39885 of 2015

Dated this the 23rd day of December, 2015

JUDGMENT

The first petitioner is an Indian citizen. The second petitioner is an American Citizen of Indian Origin. They gave a notice under the Special Marriage Act. The second petitioner is a divorcee as per the divorce granted by the court in America. The Marriage Registering Officer rejected the application for registration under the Special Marriage Act stating that divorce of the second petitioner has not been effected from the courts in India.

2. The law relating to marriage is based on the law applicable to the place of celebration. The law applicable to the divorce is based on the domicile of the parties. The decree of divorce granted by the American court is based on the domicile. Therefore, the Indian court is free to recognize a Foreign decree of divorce, subject to any challenge, such

divorce decree with reference to the parameters of Section 13 of the Civil Procedure Code. In the absence of any challenge, there is no impediment for public authorities or court to recognize divorce decree granted by the Foreign Court.

In the light of the facts and law as above, the impugned order is set aside. The Marriage Officer is directed to register the Marriage in accordance with law under the Special Marriage Act. The petitioner shall also produce a certified copy of the divorce decree granted by the court in America. The notice of marriage shall be treated as on 21.11.2015. Therefore, in the light of treating the above notice as on 21.11.2015, the petitioner is free to solemnize the marriage under the Special Marriage Act any day hereafter.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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