

CR No.6941 of 2012
Date of decision :01.10.2015

Vs.

CR No.6942 of 2012

Vs.

CORAM: HON'BLE MR. JUSTICE K.KANNAN

**Mr.M.L.Saggar, Sr.Advocage with
Mr.Sunny Saggar, Advocate for the petitioner in
CR No.6942 of 2012.**

Mr.R.S.Narang, Advocate for respondent No.1.

K.KANNAN, J.

Both the civil revisions are brought on orders passed by the trial Court dismissing applications for rejection of the plaint. The suit was filed by the plaintiff challenging the alienation made by father as not binding on him and for other reliefs. The contention was that the father got the property ancestrally and he was member of the Hindu Undivided Family. The admitted case revealed that the father had been married to a Christian in United State of America in the year 1966 and divorced in England in the year 1978. The contest taken was that the plaintiff himself was not a Hindu and the plaint is bound to be rejected.

The Court considered the rival contention of the parties and held that there was a reference to a document adverting to the marriage of the father with his mother in Anand Karaj Ceremony and therefore, the marriage

must be taken as between two Hindus. It is surely point for adjudication of the trial as to whether a Hindu married to non-Hindu in a foreign country and legitimizing such bondage by domestic law would leave his progeny as a Hindu or a Christian and whether the plaintiff could be himself as a member of Hindu Undivided Family to impeach the alienation made by the father on that basis.

The respective senior counsel on behalf of the petitioner and respondents would refer to the provision of Hindu Succession Act and Indian Special Marriage Act but there is nothing very clear brought out through the provisions that can disqualify a child born to Hindu with a non-Hindu to claim such a right. I refrain from making any definite observations about the manner or determination or religion of a person who is married to a man who is admittedly a Hindu and that will have to depend on the evidence offered at the trial. The trial Court itself, while dismissing the application has observed that the observations relating to the plaintiff status as a Hindu or his right to impeach the alienation will have to abide by final decision of the suit. The trial Court has done what is appropriate. The status of the plaintiff as a member of Hindu Undivided Family is a mixed question of fact and law and the suit cannot be thrown out at the threshold without a full fledged trial.

I maintain the order and dismiss the civil revision petitions.

01.10.2015
anil

(K.KANNAN)
JUDGE