

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE SMT. JUSTICE T.RAJANI

FAMILY COURT APPEAL No.112 of 2017

30.03.2017

Between:

Smt.S.Renuka

..Appellant

and

S.Pandu

..Respondent

Counsel for the appellant: Mrs.M.Venkateswari

Counsel for the respondent:--

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The Family Court Appeal arises out of order and decree, dated 12.05.2015, in O.P.No.1216 of 2011, whereby the Judge, Family Court, Ranga Reddy District, has decreed the said O.P. by declaring the marriage between the appellant and the respondent as nullity.

2. At the hearing, Mrs.M.Venkateswari, learned counsel for the appellant, has fairly admitted that the appellant and the respondent have married, while their respective spouses out of their first marriages were living. She has further submitted that though there is no custom prevailing in the community of the appellant, the latter has obtained customary divorce from her husband Praveen Kumar.

3. The Family Court based on the admitted facts held that the marriage between the parties during the subsistence of their earlier marriages is a nullity and accordingly, declared the marriage as such.

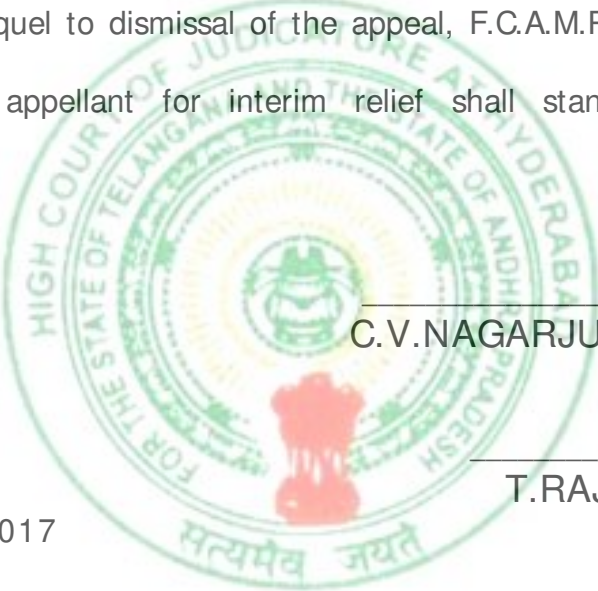
4. Section 11 of the Hindu Marriage Act, 1955 (For short 'the Act') deals with void marriages. Under this provision, any marriage solemnized after the commencement of the Act shall be null and void and on a petition presented by either party thereto the marriage be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. Section 5 of the Act deals with the conditions for a Hindu marriage and clause (i) thereof, mandates that neither party shall have a spouse living at the time of the marriage. Admittedly, both the parties had spouses living at the time of their marriage. Therefore, their marriage contravenes clause (i) of Section 5 of the Act.

5. As regards the alleged customary divorce, even as per the submission of the learned counsel for the appellant, there is no custom

prevailing in the community of the appellant for such customary divorce. Therefore, in the absence of any such custom, the alleged customary divorce obtained by the appellant from her husband cannot be treated as valid. At any rate, the respondent admittedly had a spouse living at the time of the marriage with the appellant. Therefore, this itself is enough to declare the marriage between the parties as nullity. The Family Court, in our opinion, rightly declared the marriage as void and we do not find any reason to interfere with its order and decree.

6. The Family Court Appeal is, accordingly, dismissed

7. As a sequel to dismissal of the appeal, F.C.A.M.P.No.149 of 2017 filed by the appellant for interim relief shall stand dismissed as infructuous.



C.V.NAGARJUNA REDDY, J

T.RAJANI, J

30th March, 2017
GHN