

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4614 of 2022

Smitaprativa Sahoo

.....

Petitioner

Mr. Manoranjan Mishra, Advocate

-versus-

Ramakrishna Behera

....

Opp. Party

Mr. Debasis Tripathy, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.07.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 5th January, 2022 (Annexure-1) passed by learned Judge, Family Court, Kendrapara in CP No.90 of 2019, whereby an application under Order VI Rule 17 CPC filed by the Opposite Party-husband for conversion of the proceeding under Section 10 of Hindu Marriage Act, 1955 (for short, 'the Act') to a proceeding under Section 13(1) (i-a) of the said Act has been allowed.
3. Mr. Mishra, learned counsel for the Petitioner submits that consideration and relief sought for in an application under Section 10 and that under Section 13 (1) of the Act are substantially different. In a petition under Section 10 of the Act, a party seeks judicial separation for a particular period, but under Section 13(1), a decree of dissolution of marriage is sought for. Thus, allowing an application for amendment for conversion of application under Section 10 of the Act to a

petition under Section 13(1) of the Act will certainly change the nature of the proceeding itself and is not permissible in law. In support of his case, he relied upon the decision in the case of ***Dr. N. Shiva Mohana Reddy Vs. Smt. Aparna Reddy***, reported in 2005 (1) ALT 44 (AP), wherein, learned Andhra Pradesh High Court after discussing the scope of the aforesaid provisions of the Act held as under:-

“7. In case of judicial separation, it offers an opportunity to the parties to reconcile their differences and come together, in case the parties fail to reconcile, then only the law enables under Section 13(1-A) of the Act to pass a decree for dissolution of marriage, though some of the grounds for judicial separation and divorce are one and the same. While granting a decree, different parameters are being followed. For instance under Sections 10 and 13 of the Act, unsoundness of mind is one of the grounds for seeking the respective relief. But in real sense, under Section 10 of the Act unsoundness for relevant period is a ground for seeking judicial separation, whereas for granting a decree for divorce under Section 13 of the Act, it is for the petitioner to plead and establish that such unsoundness of mind is incurable. Under Hindu Law, marriage is considered sacred. After codification of Hindu Law, and enactment of Hindu Marriage Act, 1955, Hindu Marriage, appears to be sacred as well as a contract. By virtue of the said enactment, either of the spouses can present a petition for a decree either for judicial separation or for divorce. There is fundamental difference between a petition for judicial separation and divorce. Under Section 10 of the Act, even after passing a decree for judicial separation on the application filed by either of the spouses. On being satisfied the truth of the statement made in such petition, the Court can

rescind the decree if it considers it just and reasonable to do so. But in the case of decree under Section 13 of the Act, the question of rescinding the decree does not arise, except by filing a petition for review or appeal by way of common law remedy.”

He, therefore, prays for setting aside of the impugned order.

4. Mr. Tripathy, learned counsel for the Opposite Party fairly concedes to the point of law raised by Mr. Mishra, learned counsel for the Petitioner. He also fairly submits that the order passed in ***Dr. N.Shiva Mohana Reddy (supra)*** was unsuccessfully challenged before the Hon’ble Supreme Court in Civil Appeal No.5483 of 2005. He, however, submits that some events have occurred in the meantime which requires consideration in this writ petition. It is his submission that the Opposite Party has filed an application under Section 9 of the Act, which is pending for consideration before said Court in CP No.74 of 2022. Thus, interest of justice will be best served, if both the proceedings are taken up together and analogous hearing is made.

5. Taking into consideration the submissions of learned counsel for the parties and in view of the legal position settled in the ***Dr. N.Shiva Mohana Reddy (supra)***, this Court has no hesitation to hold that the petition under Section 10 of the Act cannot be converted to a petition under Section 13 of the said Act by way of amendment. Accordingly, the impugned order dated 5th January, 2022 (Annexure-1) passed by learned Judge,

Family Court, Kendrapara in CP No.90 of 2019 is not sustainable in the eye of law and the same is set aside.

6. Parties are at liberty to move the learned Judge, Family Court, Kendrapara for analogous hearing of both the proceedings, i.e., CP No.90 of 2019 and CP No.74 of 2022.

7. The writ petition is allowed to the aforesaid extent.

Issue urgent certified copy of the order on proper application.



s.s.satapathy