Supreme Court of India
Molly Joseph @ Nish vs George Sebastian @ Joy on 18 September, 1996
Bench: N.P. Singh, S.B. Majumdar

PETITIONER:
MOLLY JOSEPH @ NISH

Vs.

RESPONDENT:
GEORGE SEBASTIAN @ JOY

DATE OF JUDGMENT: 18/09/1996

BENCH:
N.P. SINGH, S.B. MAJUMDAR

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal has been filed on behalf of the wife for setting aside the judgment of the Special Bench of the Kerala High Court, directing the District Judge to conduct enquiry into the allegations relating to the subsistence of a former marriage of the appellant and then to pass a decree accordance with law. A petition was filed by the respondent- husband before the District Judge for a declaration that (i) the marriage with the appellant is nullity on the ground he marriage between the appellant and one Prince Joseph was subsisting on the date the appellant married the respondent;

(ii) the appellant was insane and continued to be so till the date of marriage. That application was contested by the appellant saying that although she had married earlier with aforesaid Prince Joseph, the said marriage was annulled by the order of the Ecclesiastical Tribunal (Church Court as it is referred to at times). It was also asserted on her behalf that previous marriage was known to the respondent and inspite of that he agreed to marry the appellant.

The learned District Judge did not conduct any enquiry and he declared the marriage between the appellant and the respondent a nullity merely on basis of the pleadings of the parties. According to him, as the appellant had admitted the earlier marriage and as there was no decree of any Civil Court in accordance with the provisions of the Indian Divorce Act, 1869 (hereinafter referred to as the 'Divorce Act') the former marriage continued inspite of annulment order passed by the

Ecclesiastical Tribunal, and the marriage had to be declared a nullity because of Section 19(4) of the Divorce Act. As required by Section 20 read with Section 17 of the aforesaid Act the order of the District Judge was placed before a Bench of three Judges presided over by Justice K.T. Thomas (as he then was) for confirmation. The High Court held:

> "Canon Law (or personal law of Christians) can have theological or acclesiastical implications to the parties. But after the Divorce Act came into force a dissolution or annulment granted under such personal law cannot have any legal impact as statute has provided a different procedure and a different code for divorce or annulment."

This appeal is against the aforesaid judgment of the High Court.

The preamble of the Divorce Act says:

"Whereas it is expedient to amend the law relating to the divorce of persons professing to Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; it is hereby enacted as follows....."

Section 3(4) defines 'Court' to mean the High Court or the District Court, as the case may be. Section 4 provides:

> Matrimonial jurisdiction of High Courts to be exercised subject to Act.
>
> Exception - The jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise; except so far as relates to the granting of marriage licenses, which may be granted as if this Act had not been passed."

Section 10 enables any husband to present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery. A wife may also present a petition to the District Court or to the High Court for dissolution of the marriage on the grounds mentioned therein. In view of Section 17 every decree for dissolution of marriage made by the District Judge shall be subject to confirmation by the High Court. The said Section requires that cases for confirmation of decree for dissolution of marriage shall be heard by a Bench comprising of three Judges. It also vests power in the High Court, if it thinks necessary, to direct further enquiry or additional evidence to be taken. Chapter IV deals with nullity of marriages. In view of Section 18 any husband or a wife may present a petition to the District Court or to the High Court praying that his or her marriage may be declared null and void. Section 19 prescribes the grounds on which a marriage can be declared to be nullity. Section 19 provides:

> "Grounds of decree - Such decree may be made on any of the following grounds:

> (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit; (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
>
> (3) that either party was a lunatic or idiot at the time of the marriage;
>
> (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force. Nothing in this section shall affect the jurisdiction of the High Court to maks decrees of nullity of marriage on the ground that the consert of either party was obtained by force or fraud."

Every decree of nullity of marriage made by the District Judge shall be subject to confirmation by the High Court because of Section 20 and provisions of Section 17, clauses one, two, three and four, shall, mutatis mutandis be applicable.

From a bare reference to the different provisions of the Act including preamble thereof it is apparent that Divorce Act purports to amend the law relating to divorce of persons professing the Christian religion and to confer upon courts which shall include District Court and the High Court jurisdiction in matrimonial matters. In this background, unless the Divorce Act recognises the jurisdiction of Ecclesiastical Tribunal (sometimes known as Church Court) any order or decree passed by such Ecclesiastical Tribunal cannot be binding on the courts which have been recognised under the provisions of the Divorce Act to exercise power in respect of granting divorce and adjudicating in respect of matrimonial matters. It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such starutory provisions shall prevail and override any personal law, usage or custom prevailing before coming into force of such Act. From the provisions of the Divorce Act it is clear and apparent that they purport to prescribe not only the grounds which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. As already mentioned above, such power has been vested either in the District Court or the High Court. In this backgroud, there is no scope for any other authority including Ecclesiastical Tribunal (Church Court) to exercise power in connection with matrimonial matters which are covered by the provisions of the Divorce Act. The High Court has rightly pointed out that even in cases where Ecclesiastical Court purports to grant annulment or divorce the Church authorities would still continue to be under disability to perform or solemnize a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force.

The learned counsel appearing for the appellant placed reliance on the judgment of this Court in the case of Lakshmi Sanyal v. Sachit Kumar Dhar, AIR 1972 SC 2667 = (1973) 2 SCR 122, in support of his stand that inspite of the provisions of the Divorce Act and procedures prescribed therein for dissolution of marriage or declaration of a marriage to be nullity, Ecclesiastical Tribunal can also dissolve a marriage. In that case, this Court was considering whether a marriage could be declared a nullity on the ground that the parties were within the prohibited degrees of consanguinity which is a ground for declaring a marriage to be nullity under Section 19(2) of the Divorce Act. In that

connection, it was said:

> "The second point relates to the effect of the marriage between the parties within the prohibited degree of consanguinity. The Indian Divorce Act or the Indian Christian Marriage Act do not give any definition of what the prohibited degrees are. It has been urged on behalf of the appellant that assuming the Canon Law had to be looked at for finding the prohibited degrees it has been found that the appellant and the respondent being children of real sisters fell within those degrees. Section 19 of the Divorce Act lays down in categorical terms that a marriage may be declared null and void, inter alia, where the parties are within the prohibited degree of consanguinity. There is no exception contained in ground No.2 in the said section. It is not open, it has been contended, to the courts to travel beyond S.19 or the provisions of the Divorce Act to discover whether such an impediment which renders the marriage null and void ab initio can be removed by a dispensation granted by the competent authoriby of the Roman Catholic Church..... .... The question of capacity to marry and impediments in the way of merriage would have to be resolved by referring to their personal law. That for the purpose of deciding the validiay of the marriage, would be the law of the Roman Catholic Church namely, the Canon law of that Church."

From the judgment aforesaid it is apparent that this Court having said that Section 19(2) makes a marriage between the parties within the prohibited degrees of consanguinity a ground for declaring the marriage to be nullity, pointed out that the Divorce Act does not give definition as to what are the prohibited degrees Thereafter it was said that for that limited purpose personal law has to be looked into. According to us, on basis of the aforesaid judgment of this Court it cannot be that any declaration of marriage to be void by Ecclesiastical Tribunal shall be binding on the District Court or the High Court. Such Ecclesiastical Tribunal cannot exercise a power parallel to the power of the District Court or the High Court which have been vested in the District Court and the High Court by the provisions of the Divorce Acts Section 18 provides that any husband or wife may present a petition to the District Court or to the High Court praying that his or her marriage may be declared null and void. In that event, it excludes the jurisdiction and authority of any other Tribunal or Court including Ecclesiastical Tribunal (Church Court).

As the District Judge had disposed of the application for divorce without any enquiry into the allegations relating to the subsistence of the former marriage, the High Court was justified in remitting the matter to the District Judge for fresh decision in accordance with law. We find no reason to interfere with the said order. The appeal is accordingly dismissed. No costs.