

Madras High Court

Dexter S. Anthony vs June P. Anthony And Anr. on 21 November, 1984

Equivalent citations: (1985) 2 MLJ 200

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ORDER R. Sengottuvelan, J.

1. The reference in the above Diary No. 388 of 1984 raises an interesting question relating to the matrimonial jurisdiction of this Court. The petitioner presented an application under Section 10 of the Indian Divorce Act for the relief of divorce of the marriage of the petitioner with the respondent. In paragraph 6 of the application it is stated as follows:

After the marriage the petitioner and the respondent lived and cohabitated as husband and wife first at Little Mount, Saidapet, Madras, for five years, and then at Gunidy, Madras, for three years and lastly at Kennedy Valley, Moosaranpet, Madras-600 091, until February, 1983, when the respondent left the petitioner in the following circumstances.

2. Moosaranpet is within the jurisdiction of the District Court of Chengalpattu. According to the office note the petition for divorce has to be filed in the District Court within whose jurisdiction both the parties last resided. The office also points out two conflicting judgments of this Court relating to jurisdiction and seeks clarification in the matter. Balasubrahmanyam, J. in Diary No. 6509 of 1975, held that in respect of petition under Sections 8, 10 and 23 of the Indian Divorce Act, the High Court and the District Court within whose jurisdiction the petitioner and the respondent last resided has got concurrent jurisdiction, disagreeing with the earlier views expressed by Sadasivam, J. and Sethuraman, J. The office also points out another judgment of Fakkir Mohammed, J. in O.M.S.No. 1 of 1978, holding that in such cases only the District Court has got jurisdiction. In view of the divergence of the views expressed we have to consider the matter in detail and come to a conclusion regarding the question of jurisdiction.

3. Before proceeding to discuss the question of jurisdiction it will be useful to state the relevant provisions of law regarding jurisdiction in respect of the cases arising under the Indian Divorce Act, 1869, hereinafter referred to as the Act.

4. The preamble to the Indian Divorce Act 4 of 1969 is as follows:

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

Section 2 of the Act lays down that the Act extends to the whole of India except the State of Jammu and Kashmir. Section 3 of the Act relates to the interpretation of clauses with reference to several terms appearing in the Act. According to Section 3(1) "High Court" means, with reference to any area in a State, the High Court for that State and in the case of any petition under the Act, "High Court" means the High Court for the area where the husband and wife reside or last resided together. According to Section 3(2) "District Judge" means a Judge of a Principal Civil Court of

original jurisdiction however designated. Section 3(3) of the Act defined the "District Court" as follows:

"District Court", means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

According to Section 3(4) "Court" means the High Court or the District Court, as the case may be. Section 4 of the Act deals with the manner of exercise of jurisdiction by the High Court in matrimonial cases and is as follows:

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.

5. Sections 10, 18 and 23 enable an individual to whom Indian Divorce Act applies to present a petition for dissolution of the marriage, declaration of nullity of marriage and for judicial separation, respectively, to the High Court or the District Court.

6. The contention of the petitioner is that the abovesaid sections conferring jurisdiction taken together will mean that in respect of cases arising under Sections 10, 18 and 23, the High Court of Madras will have concurrent jurisdiction along with the District Court throughout the State of Tamil Nadu. The points urged in support of this contention are as follows:

1. In Sections 10, 18 and 23 it is stated that a petition for the appropriate relief can be made to the District Court or to the High Court:

2. As per Section 3(1) of the Act High Court means, with reference to any area in a State, the High Court for that State and in the case of any petition under the Act, it means the High Court for the area where the husband and wife reside or last resided together. According to Section 3(3) of the Act the District Court means in the case of any petition under the Act the court of the District Judge within the local limits of whose ordinary jurisdiction, or within whose jurisdiction under the Act, the husband and wife reside or last resided together. The wording of Sections 10, 18 and 23 taken along with the above definition will indicate that both the Courts will have concurrent jurisdiction.

3. According to Clause 35 of the Letters Patent the High Court is vested with matrimonial jurisdiction throughout the state.

7. In support of the petitioner's contention reliance is placed upon the decision of Balasubrahmanyam, J. in Diary Net 6509 of 1975 (O.M.S.No. 21 of 1975), where it was held that this Court has got jurisdiction to entertain applications under Sections 10, 18 and 23 even in cases of spouses who have last resided outside the jurisdiction of this Court on the basis that in such cases the District Court and the High Court have concurrent jurisdiction.

8. On an analysis of the provisions of Act conferring jurisdiction on the High Court and the District Court and the Clause 35 of Letters Patent I am not able to persuade myself to accept the proposition that the High Court and the District Court can exercise concurrent jurisdiction in matters arising under Sections 10, 18 and 23 of the Act, for the following reasons:

1. According to the preamble to the Act the Courts will have to exercise such jurisdiction as is conferred under the Act in matters matrimonial;
2. As per Section 3(4) of the Act "Court" means the High Court or the District Court, as the case may be. If it was the intention of the framers of, the Act that the High Court should exercise concurrent jurisdiction along with the District Court then the phrase "as the case may be" occurring in Section 3(4) of the Act will have no meaning;
3. The provision that an application is to be made to the High Court or the District Court in Sections 10, 18 and 23 will have to be taken along with the definition of "Court" occurring in Section 3(4) of the Act; and it must be construed only to mean the High Court in respect of areas comprised in the original jurisdiction of the High Court and the District Court for which the District Judge is deemed to be the Judge exercising principal civil Court's original jurisdiction.
4. Coming to a conclusion that the High Court will have the concurrent jurisdiction along with the District Court in matrimonial matters on account of the use of the words High Court or the District Court will not go in conformity with the provision in Section 3(4) of the Act;
5. Even in Clause 35 of the Letters Patent there is a provision by which the jurisdiction of the Courts not established by the Royal Charter are preserved. Clause 35 is as follows:

Matrimonial jurisdiction: And we do further ordain that the said High Court of Madras shall have jurisdiction, within the Presidency of Madras in matters matrimonial between our subjects professing the Christian religion; Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by the Royal Charter within the said Presidency lawfully possessed thereof.

As per the proviso to Clause 35 the said jurisdiction vested with the District Court cannot be interfered with. If a concurrent jurisdiction is meant, there is no need for the proviso to Clause 35 of the Letters Patent. In the case reported in *Mrs. Kamala Nair v. N.P. Kumaran Nair Chagle*, Chief Justice, in interpreting Clause 35 of the Letters Patent (Bombay) has held that the matrimonial Jurisdiction of the High Court provided in Clause 35 cannot be exercised in cases where a specific provision is made in a specific enactment.

6. Sections 16 and 20 of the Act provide for confirmation of the decree of the District Court in respect of divorce and declaration regarding nullity by the High Court. These provisions will also indicate that there cannot be a concurrent jurisdiction exercisable by the High Court as well as the District Court.

7. According to Section 6 of the Act suits pending at the time of the commencement of the Act at any High Court shall be decided by such Court. This enabling provision indicates that the High Court has no jurisdiction in cases that arise after the Act where the spouses last resided outside the original jurisdiction of this Court.

8. The speech of Honourable Mr. Maine in the Legislative Council on 26th March, 1869, Fort St., George Gazette, March 31st, 1869, P-6, indicate that the Legislature never intended to confer a concurrent jurisdiction on both the High Court and the District Court. The relevant portion of the speech quoted at pages 74 and 75 of the law of Divorce by the Hon'ble Sir Henry Rattigan, Kt, second edition, is extracted below:

On the question whether the District Courts should be allowed a jurisdiction in divorce cases, there was a difference of opinion. The main reason why the Select Committee had given this jurisdiction was that the refusal of it would amount to a denial of relief to large classes of persons affected by the Bill. It would be a mere mockery of Europeans and East Indians in distant cities, and Native Christians in mofussil villages, to tell them to come to the High Courts in the Presidency towns for judgments of divorce. It is however said that the District Courts are not equal to those duties. That argument is one which should be looked upon with great distrust. If it be established that certain new legal rights and remedies should be created for the benefit of any class of Her Majesty's subjects, and the Indian Courts are incompetent to administer them, the proper inference should be that the Courts should be reformed, not that the rights and remedies should be refused. But the charge is, in truth, often hastily made, and, moreover, there is nothing specially difficult in questions of divorce. They are important on account of their social importance, but for the most part, involve very simple questions of fact .... If, however, it be once granted that the District Courts must have jurisdiction, their exercise of it is, by this Act fenced round with many safeguards. The High Court can call up at any time any case that presents special difficulty.... The Act applies to the decrees of District Courts the same principle which is applied in India to capital sentences, and requires that they be confirmed by the High Court. And the High Court has full powers of calling for fresh evidence.

9. Section 8 of the Act deals with the extraordinary jurisdiction of the High Court to withdraw any case pending before the Court of any District Judge for the purpose of trying it as a Court of original jurisdiction. The very use of the expression "extraordinary jurisdiction" indicates that the High Court has no ordinary jurisdiction in the areas outside its original jurisdiction in respect of cases arising under the Act.

10. For the above reasons I am not inclined to agree with Balasubrahmanyam, J. in his conclusion that in cases of applications under Sections 10, 18 and 23 both the High Court and the District Court concerned are vested with the concurrent jurisdiction. The contention that this Court has got concurrent jurisdiction had been negatived by Sadasivam, J. in O.M.S.No. 13 of 1963, Sethuraman, J. in Diary No. 1680 of 1974 and Fakir Mohammed, J. in O.M.S.No. 1 of 1978. The learned Judges in the abovesaid three cases have taken into consideration the proviso to Clause 35 of the Letters Patent and the definition of 'Court' occurring in Section 3(4) of the Act and negatived the plea that this Court is to exercise concurrent jurisdiction along with the District Court concerned in matters

arising under Sections 10,18 and 23. I am inclined to agree with the preponderance of Judicial opinion in this regard and hold that in view of the fact that the petitioner and the respondent have last resided within the jurisdiction of the District Court of Chengalpattu, this Court will have no jurisdiction to (entertain the above suit. I answer the reference on the above lines.