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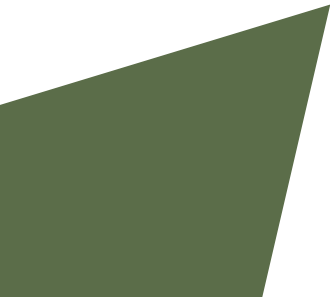
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Case Commentary: Y.Narsimha Rao & Ors v. Y. Venkata Lakshmi & Ors.

Deep Narayan Sarkar

Y.NARSIMHA RAO & ORS V. Y. VENKATA LAKSHMI & ORS.

(1991) 3 SCC 451

The appellant 1 and respondent 1 were married in India in 1975 at Tirupati according to the Hindu law. They separated in 1978. The appellant filed an application for the dissolution of marriage before Sub-Court of Tirupati and claiming he was a citizen of India but a resident of New Orleans, Louisiana, USA. However, in 1980, he filed another petition for dissolution of marriage in the Circuit Court of St. Louis County, Missouri, USA. It was alleged in the petition that the court had jurisdiction in deciding the case as he had been a resident of the State of Missouri for more than 90 days. Also, it has been averred that the respondent 1 had deserted him for more than one year and showed no interest in coming and staying with him in USA. The Circuit Court assumed jurisdiction of the matter and passed a decree for the dissolution of marriage on the ground that it was irretrievably broken. The judgement was passed in the absence of the respondent 1. Thus, the petition before the Sub-Court of Tirupati was duly dismissed. However, the appellant 1 and appellant 2 got married in India in 1981. The Respondent 1 initiated a criminal complaint against the appellants for the offence of Bigamy. The appellants filed an application for their discharge in view of decree for dissolution of marriage passed by the Circuit Court of Missouri. The magistrate upheld the decree of the foreign court. However, it was overturned by the High Court which claimed that a Photostat copy of the judgment of Missouri cannot be admissible in evidence to prove the dissolution of marriage. Hence, the case was appealed to the Supreme Court.

The issues of the case are the following:

- 1) Whether the judgment passed by the Circuit Court of St. Louis County, USA, be considered as a conclusive proof of the dissolution of marriage for the courts in India?
- 2) Whether the Photostat proof of the foreign judgement be admissible in the courts of India or not?

The case is important in the light of the Civil Procedure Code because there should be more rules for foreign judgements in personal and family matters and particularly when matrimonial disputes are at its peak. In this age of globalization, such rules are required as people are constantly moving

from one country to another and are also getting married in different country and settling there. There is a need for establishing rules and regulations for Foreign Judgements as they are becoming the order of the day. Therefore, it is very important to recognize the foreign judgements in the Indian setting provided it is in conformity with the Indian law so that no one can take advantage or get victimized of the lacunae which exists.

The Supreme Court has done a phenomenal job in adjudicating both the issues that had been raised in the given case. Coming to the first issue of the admissibility of the foreign judgement of the divorce decree given by the Circuit Court of St. Louis County, USA, the Supreme Court said that the decree cannot be admissible as the Circuit Court has passed the judgement without any jurisdiction as neither the marriage was celebrated nor the parties last resided together nor the respondent stayed within the jurisdiction of the court. Also, the ground on which the divorce decree was passed by the foreign court is not in conformity with the Act¹ which is applicable to marriage. Further, it has also been proved that the appellant never intended to live in the state of Missouri and had only fulfilled the condition of 90 days stay to obtain the favorable decree. The court also stated that there was degree of false averment in the petition as the appellant claimed that the respondent refused to stay with him in the foreign land. Thus, an element of fraud has been played by the appellant to obtain a favorable decree. Keeping all the given scenario into account the Supreme Court refused to accept the judgement passed by the foreign court as it had passed a judgement without any jurisdiction and the judgement has obtained by means of fraud which clearly vitiates it as mentioned in Section 13 (e) of the Code².

The Court has been correct in adjudicating the above issue as the ground on which the divorce decree has been passed by the foreign court is not in conformity with the Act³. Therefore, for a foreign judgement to be admissible in India, it should be in accordance with the law governing the parties and both the parties should submit to the jurisdiction of the court for the judgement to be taken into consideration.⁴ This is correct as the irretrievably breakdown of marriage is nowhere laid down in the Hindu Marriage Act, 1955 and therefore cannot be accepted by the courts in India as it is against the provisions of section 13(c) of the Civil Procedure Code, 1908. A judgement based upon an incorrect view of international law or a refusal to recognize the law of India where such law

¹ Section 13 of the Hindu Marriage Act,1955.

² Section 13 of Civil Procedure Code, 1908.

³ Ibid.

⁴ 2013 SCC Online P&H 4357.

is applicable is not conclusive⁵. Also, the court had no jurisdiction as the appellant was not a permanent member of the state and was only there to satisfy the 90-day mark to obtain a favorable decree. The respondent has also not submitted to the jurisdiction of the court and they didn't reside together within the jurisdiction of the Circuit Court. Therefore, it satisfies section 13 (a) of the Civil Procedure Code, 1908 and cannot be taken into account by the courts in India. Further, the court has been correct in rejecting the judgement as the appellant had obtained the judgement on the basis of fraud as a result of his false averment before the Circuit Court. It is a well settled proposition of law that a judgement, decree or order obtained by playing fraud is a nullity and non est in the eye of law. It can be treated as nullity by any court whether superior or inferior ⁶. Therefore, the judgement was not admissible in the courts in India.

The Supreme Court held that the Photostat copy of the decree inadmissible because it has not been certified by one of India's representative of the Central Government in America. The Court criticized the High Court for the reason it gave to reject the Photostat copy of the decree. Clearly, the High Court erred in its reasoning of not excepting the Photostat copy of the decree as it said that the copy will not be admissible in evidence. However, the High Court's reasoning clearly defeats the principle laid down in Section 63(1) and (2) read with Section 65 (e) and (f) of the Indian Evidence Act which clearly lays down that mechanical copy will be admissible in Court and the Photostat copy which is mechanical in nature should also be admissible by the Court. Supreme Court corrected the reasoning by saying that the copy will be inadmissible in court not because it is mechanical in nature but because it has not been certified by competent authority as proposed by the Central Government in USA. Thus, to reject the Photostat copy of the decree, the Supreme Court proposed that the "certified copy" in Section 14 ⁷ should be read consistently with Section 86 of the Indian Evidence Act.

The Supreme Court has been correct in providing reasons not to accept the certified copy of the foreign judgement. A mere interpretation of the Section 14 of the Civil Procedure Code, 1908 clearly lays down the principle that a certified copy will only be admissible if it is pronounced by the court of competent jurisdiction unless the contrary is proved. In the given case, it has been proved that the Circuit Court had no jurisdiction to pass the judgement, therefore the "certified copy" of the decree cannot be admitted in the courts of India as the contrary had been duly proved in the

⁵ R. Vishwanathan vs Rukn-ul-Mulk Syed Abdul, (1963) 3 SCR 22.

⁶ A.V. Papayya Sastry vs. Govt. of A.P, (1975) 1 SCC 120.

⁷ Civil Procedure Code, 1908.

instant case. Therefore, Section 13 & 14 provide the guidelines how the foreign judgements have to dealt with⁸.

The Supreme Court should be credited for laying down such a brilliant judgement keeping in view the two sections,13 and 14, in picture. The Court had not left any lacunae in the instant case and had taken all the provisions of section 13 (a) to (f) of the Civil Procedure Code,1908 into account. Needless to say that court has been correct in setting aside the judgement of Circuit Court, USA and has also laid down the correct reasoning which cannot said be said to flawed. Therefore, this judgement can be used as a precedent in the future cases and aim to fill the loopholes that had been there in the admissibility of Foreign Judgements in India.

⁸ 2015 SCC Online Del 2516.