Conflict of law

Level:400

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Assignment

Explain the terms 'limping marriage and identify the ways at common law, by the incidence of limping marriage have been reduced.

Answer

The term "limping marriage" was need by the Goa High Court in Pires Vs. Pires AIR 1967, Goa, Daman and Diu, 113. for situations where a couple was considered married in one country and divorced in another. In this case the court tried to lay down certain principles of Private International Law to be applicable in India as it interpreted S.13 of the Civil Procedure Code (CPC) 1908.

The facts of Pires Vs. Pires were as follows :

A divorce decree was secured by the husband from the High Court of Uganda against his wife living in Goa with respect of his Roman Catholic marriage solemnized in Goa. The record shows that the divorce was sought and secured on the ground that the wife Joequina had been living in adultery. Joequina opposed the prayer for confirmation of the decree based on foreign judgement on two grounds. First, she pleaded that she had not been given proper notice of the proceedings instituted against her in the High Court at Kampala and second that she and her husband Pires, being Roman Catholics and their marriage having been solemnized in a church at Goa where the law was and continued to

be that such marriages or indissoluble, the decree obtained from Kaurpala could not be recognized in India.The Court, making some definitive statements on Private International Law, said that all countries in the world had enacted statutory provisions with regard to how and under what circumstances could foreign judgements be implemented. In India the relevant law was to be found in sections 13 and 44-A of the CPC of 1908. Broadly speaking these provisions laid down two methods of implementing foreign judgements. One was to file a suit on the basis of the foreign judgement in an Indian court and then carry out the decree made by it.. The second was the execution of the decree of the foreign court straight away by a District Court in India if there were reciprocal arrangement between India and the country in which the foreign judgement was given.

According to S.13, a foreign judgement was conclusive as to any matter directly adjudicated upon between the parties with six exceptions:

A foreign judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parities under whom they or any of them claim litigating under the same title except.

a) where it has not been pronounced by a court of competent jurisdiction.

b) Where it has not been given on merits of the case:

c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognized the law of India in cases in which such law is applicable;

d) Where the proceedings in which the judgement was obtained are opposed to natural justice ;

e) Where it has been obtained by fraud;

f) Where it sustains a claim founded on a breach of any law in force in India.

In modern society , the role of marriage and its termination through divorce have become political issues. As people live increasingly mobile lives, the conflict of laws and its choice of law rules are highly relevant to determine: the circumstances in which people may obtain divorces in states in which they have no permanent or habitual residence ; and when one state will recognize and enforce a divorce granted in another state The problems Sometimes, people get married who have nationalities domiciles or . This can produce serious problems for the parties and for the court systems which are expected to accept jurisdiction over persons sometimes only transiently within their territorial boundaries, and to enforce the judgments and orders of foreign courts. These more technical problems can be made worse by any personal animosity between the parties which contributed to the marital breakdown.

2.Mutation of Marriage.

Many legal systems permit polygamous marriage, under which a man may marry more than one wife. As a general the English court will not grant Matrimonial relief in polygamous and potentially polygamous union (parkasho v singh) (Ali v Ali) likewise whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated .Moslem countries around the world, including Jordan, allow polygamy, and in a number of African countries it is permitted for people who celebrate their marriages under Moslem or customary law. Polygamous marriages at one time, in United Kingdom, caused considerable difficulties in the conflict of laws. For reasons, which will be explained later, the difficulties have been considerably reduced in recent years, but may still exist in connection with such matters as social

security, taxation, and immigration.

In Hyde v Hyde, 1 an Englishman who had converted to the Mormon faith in 1847,marriedaMormonwomaninUtah,UnitedStates,in1853. They livedtogether in Utah until 1956 when the husband went on a mission to what is now Hawaii. On arrival there, he renounced his faith and soon after he became the minister of a dissenting chapel in Derby, England. He petitioned for divorce on the Ground of his wife's adultery after she had contracted another marriage in Utah in accordance with the Mormon faith.

Lord Penzance refused to adjudicate on his petition on the ground that " marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman to the exclusion of all others,"2 and that this Mormon marriage was no marriage which the English Divorce Court could recognize, because there was evidence that polygamy was a part of the Mormon doctrine, and was the common custom in Utah. He said," it is obvious" "that the matrimonial law of this country is adopted to the Christian marriage, and is wholly inapplicable to polygamy.Ever since the decision in Hyde v. Hyde2 (now more than a century old) English and Australian Courts have declined to grant matrimonial relief in respect of a polygamous marriage. When is a marriage polygamous? Until recently it was generally thought that the nature or character of a marriage is immutably determined by the law of the place of ~elebration.I~n recent years it has been conceded that the character of a marriage may be changed from polygamous to monogamous. In cases where such a mutation was recognised as in Cheni v. CheniP the change was in accordance with the law of the place of celebration itself.

In Ali v. Ali the husband was born in India. At the age of 24 he came to England, obtaining a job and living permanently there. Four years later he

returned to India where he married an Indian wife chosen by his father. The ceremony took place according to the rites of the Muslim faith which was the religion of both parties. By Muslim law the husband was permitted totake further wives. The marriage was therefore ~ o t e n t i a l lp~olygamous at its inception. The husband left for England shortly after the marriage and resumed his employment there. The learned judge (Gumming-Bruce, J.) decided that by the middle of 1961 he had acquired a domicile of choice in England. The wife followed and cohabited with her husband in England. In 1959 the husband applied for British nationality and in the same year a child was born to the parties, Shortly thereafter the wife left the matrimonial home with the child and returned to India. In 1960 the husband obtained a British passport, continuing to live ~ e r m a n e n t lin~ England. In 1964 he began living with a woman and a child was born of this relationship. In 1963 the husband petitioned for divorce on the ground of desertion. The wife denied desertion and alleged cruelty. She also alleged that the Court had no jurisdiction on the ground that the marriage was polygamous.

In 1964, when the husband committed adultery, the wife cross-petitioned for a dissolution of the marriage on this ground.

The suits were heard by Cumming-Bruce, J. who held that the Court could not exercise jurisdiction in respect of the offences of desertion and cruelty because they took place, if at all, at a time when the marriage was still polygamous. However, the learned judge granted the wife a decree nisi on the ground of adultery as this offence took place after the character of the marriage had been rendered monogamous by the acquisition of an English domicile of choice by the husband.

In Conclusion

The foregoing is intended merely to introduce the complexity of the

cultural problem one encounters while attempting to accommodate the institution of polygamy within the framework of a common law system.The trend would thus appear to Favour the reconciliation of the sharp distinction between polygamy and monogamy.The common law acceptance to the principle mutation is one major step towards reconciling foreign law and culture with the law established traditions of English private international law and the western Judaic-Christian institution of monogamous marriage.

while the principal of mutation cannot assist the parties to an actually polygamous marriage the United Kingdom legislature has released the courts from the narrow and rigid rule in Hyde v.Hyde by enacting the matrimonial proceedings (polygamous marriage)Act 1972 .Thus English courts have been empowered to provide relief petitioner in a polygamous marriage,in spite of the Fact there may be more than one wife living at the time of the hearing.presently Canada no corresponding states.