

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 8<sup>TH</sup> DAY OF JUNE 2023 / 18TH JYAISHTA, 1945

MAT.APPEAL NO. 784 OF 2022

AGAINST THE JUDGMENT DATED 2.08.2022 IN OP 756/2022 OF

FAMILY COURT, ERNAKULAM

APPELLANTS/PETITIONERS:

1 "X"

2 "Y"

BY ADVS.  
DHANYA P.ASHOKAN  
M.R.VENUGOPAL  
S. MUHAMMAD ALIKHAN

RESPONDENTS:

NIL  
NIL

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION  
ON 08.06.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

C.R.

**J U D G M E N T**

**A. Muhamed Mustaque, J.**

This appeal is of a peculiar nature. The appellants by entering into a registered agreement on 19.02.2006, started living together. In that relationship, they have a 16 years old child. They no longer want to live together. They lived as husband and wife for quite a long time. Both of them now want to get rid of the relationship. The first appellant is a Hindu and the 2<sup>nd</sup> appellant is Christian by faith. They moved a joint petition before the Family Court, Ernakulam invoking Section 28 of the Special Marriage Act for mutual divorce.

2. The Family Court, noting that the marriage was not solemnised under the Special Marriage Act, dismissed the petition for divorce. This is how the appellants have jointly come before us in this appeal.

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3. We heard the learned counsel appearing for the appellants-Dhanya P. Ashokan at length.

4. According to the learned counsel for the appellant, when both parties accepted their relationship as a marriage by declaration, it is not for the Court to decide that they are legally married or not. The learned counsel for the appellants submits that the registration under the Registration Act itself would be sufficient to fortify their claim that they are legally wedded. It is pointed out that only after 2009, by an amendment brought into the Rules framed under the Registration Act, the power of the Sub Registrar has been taken away.

5. Marriage as a social institution, as affirmed and recognised in legislation, reflects the social and moral ideals followed in the larger society. The Law is yet to recognise the live-in relationship as marriage. The Law accords recognition only if the marriage is solemnised in

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accordance with the personal law or in accordance with secular law like the Special Marriage Act. If the parties decide to live together by virtue of an agreement, that by itself will not qualify them to claim it as a marriage and claim divorce thereon. The law recognises divorce as a mean of separating a legal marriage. There may be a situation where the relationship qualifies for creation of reciprocal obligation or duties elsewhere. But that does not mean that such a relationship can be recognised for the purpose of divorce. Law relating to divorce is peculiar in our country and customised through legislation. The extra-judicial divorce followed in some communities also got recognition through statutory laws. All other forms of divorce are of statutory nature. The statute only recognise or allows the parties to divorce if they are married in accordance with the recognised form of marriage applicable as per the personal law or secular law.

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6. We also note that the Family Court had no jurisdiction to entertain such a claim for separation. The Family Court enactment was made to resolve all disputes related to marriage and family affairs thereon. The marriage referred to in the preamble of the Family Court Act only denotes marriage as recognised by the law. Any marriage entered into between the parties through a contract has, so far, not got any recognition under law for the purpose of granting divorce. In such circumstances, the Family Court also does not have jurisdiction to entertain such claim for divorce.

7. The Family Court, in fact, has gone further and dismissed the petition for divorce holding that the marriage was not solemnised in accordance with the Special Marriage Act. If the Family Court does not have jurisdiction, the Family Court can only hold that the petition was not maintainable and cannot dismiss the claim for separation. In such

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circumstances, we are of the view that the Family Court ought to have returned the petition holding that it is not maintainable.

In view of the discussions as above, we direct the Family Court, Ernakulam to return O.P No.756 of 2022 holding that it is not maintainable. The parties are given liberty to work out their remedy elsewhere. Accordingly, this appeal is disposed of.

**Sd/-**

**A.MUHAMED MUSTAQUE**

**JUDGE**

**Sd/-**

**SOPHY THOMAS**

**JUDGE**

**PR**