ORIGINAL CIVIL.

Before Sen J.

RATAN BEHARI DATTA

v.

MARGARETHA HEH.*

1938

Aug. 12.

Marriage—Nullity, Declaration of—One party professing the Hindu religion, another professing no religion—Relief, if to be obtained in the Ordinary Original Civil Jurisdiction—Special Marriage Act (III of 1872), s. 2.

A marriage celebrated under the Special Marriage Act between a person who professes the Hindu religion and another who does not profess any one or other of the following religions, *viz.*, the Hindu, Buddhist, Sikh or Jaina religion is null and void.

A suit for a declaration of nullity of marriage celebrated under the Special Marriage Act between a person who professes the Hindu religion and another who does not profess any religion is maintainable in the Ordinary Original Civil Jurisdiction of the High Court.

Wenckenbach v. *Taylor* (1) distinguished.

SUIT for declaration of nullity of marriage.

The plaintiff went through a form of marriage with the defendant under the Special Marriage Act. Before the marriage was solemnised, the plaintiff signed a declaration in which he stated that he professed the Hindu religion, while the defendant declared that she did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.

Sikhar K. Basu for the plaintiff. The marriage is null and void as it offends against the provisions of s. 2 of the Special Marriage Act. Marriage between a person professing one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh

*Original Suit No. 886 of 1938.

(1) (1936) 41 C. W. N. 270, *footnote.*

1938

Ratan Behari Datta v. *Margaretha Heh.*

or Jaina religion and a person who does not profess any one or other of the said religions cannot be effected under the Special Marriage Act.

As the declaration of nullity of marriage is sought neither on the grounds mentioned in the Indian Divorce Act nor on the additional grounds mentioned in s. 17 of the Special Marriage Act, the relief can only be obtained under the Specific Relief Act. The suit has therefore to be instituted in the Ordinary Original Civil Jurisdiction of the High Court. That distinguishes this case from *Wenckenbach* v. *Taylor* (1).

SEN J. This is a suit by one Ratan Behari Datta for a declaration that the marriage solemnised between him and one Margaretha Heh is null and void.

The parties went through a form of marriage under the Special Marriage Act, Act III of 1872. According to that Act the parties have to make certain declarations in accordance with the terms of s. 2 of the Act before the Registrar of Marriages appointed under Act III of 1872. The declarations made by the parties have been proved. Ratan Behari Datta declared that he professed the Hindu religion, while Margaretha Heh declared that she did not profess the Christian, Jewish, Hindu, Mahomedan, Parsi, Buddhist, Sikh or Jaina religion. In short she did not profess to follow any religion at all. They made other declarations which are not material for the purposes of this suit.

The plaintiff says that this marriage is null and void inasmuch as it offends against the provisions of s. 2 of the Special Marriage Act.

In my opinion the contention on behalf of the plaintiff must be given effect to. Section 2 of the Special Marriage Act consists of two portions.

(1) (1936) 41 C. W. N. 270, *footnote.*

Under the first portion, persons who do not profess the Christian or Jewish or Hindu or Mahomedan or Parsi or Buddhist or Sikh or Jaina religion are permitted to be married under the Act. The present case does not come under this part of the section inasmuch as Ratan Behari Datta has declared that he professes the Hindu religion. The next part of the section permits the marriage of persons, each of whom professes one or other of the following religions, namely, the Hindu, Buddhist, Sikh or Jaina religion. It is clear from the section, therefore, that two classes of persons only may be married under this Act, *viz.*, (i) persons who do not profess any of the religions mentioned in the first part of s. 2, and (ii) persons each of whom professes one or other of the four religions mentioned in the second part of the section. There cannot, therefore, be a marriage celebrated under this Act between a person who professes the Hindu religion and a person who does not profess any one or other of the following four religions, *viz.*, the Hindu, Buddhist, Sikh or Jaina religion.

In the present case the plaintiff professed the Hindu religion while the defendant professed none of the last mentioned four religions. That being so, the marriage is null and void.

The case is an undefended one, but I consider that it is necessary to pronounce a judgment at some length in view of the importance of the question involved. There can be no doubt that the Marriage Registrar did not understand the true import of s. 2 of the Special Marriage Act with the result that he allowed two persons to go through a form of marriage which marriage is now found to be null and void. I need hardly say that it is of the utmost importance that cases of this kind should not recur and I trust that Marriage Registrars will be duly instructed in such a way as to prevent their performing invalid marriages of this description.

1938

Ratan Behari Datta v. *Margaretha Heh.*

Sen J.

Learned counsel appearing on behalf of the plaintiff very properly drew my attention to the case of *Otto Guenter Wenckenbach* v. *Henrietta Violet Taylor* (1), wherein a contention was raised that, in the circumstances of that case, the suit should have been brought in this Court in its Matrimonial Jurisdiction and not in its Ordinary Original Civil Jurisdiction. That case, however, is clearly distinguishable from the present one and, in my opinion, the present case has rightly been brought in this Court in its Ordinary Original Civil Jurisdiction.

The marriage of the plaintiff is declared null and void. The suit is decreed.

There will be no order for costs.

Suit decreed.

Attorneys for plaintiff: *Dutt & Sen.*

A. C. S.

(1) (1936) 41 C. W. N. 270, *footnote*.