CRP 4/2002
BEFORE
THE HON'BLE MR. JUSTICE I. A. ANSARI

(1) This revision application made under regulation 50 of the Assam Frontier (Administration of Justice) Regulation, 1945, (hereinafter as \the said regulatio n) read with Section 151 of the code of Civil Procedure has arisen out of the or der, dated 02. 05. 2002, passed by the learned Deputy Commissioner, Papum pare D istrict, Yupia, in Misc (Divorce) No. 02/2001, whereby the learned Court below h eld to the effect that the application made by the O. P. No. 3 of this revision petition by the O. P. No. 3 of this revision petition under Sections 12 and 13 o f the Hindu marriage Act, 1955, seeking a decree of nullity or a decree of disso lution of her marriage with the revision petitioner is maintainable and the divo rce proceedings would continue.

(2) Briefly stated, facts giving rise to this revision are as follows :

(i) The O. P. No. 3, in this revision, namely, Smt. Anom Apang (who is hereinaft er as 'the applicant-O. P. ') failed an application under Section 12 read with S ection 13 of Hindu Marriage act, 1955 (Hereinafter as 'the said Act') seeking a decree of nullity or a decree of dissolution of her marriage with the revision p etitioner (who is hereinafter as 'the respondent- petitioner), her case being, i n brief, that she is Hindu by religion belonging to Manipuri tribe, she was forc ed to marry the respondent-petitioner in the year 1991 and out of their wed-lock , 3 (three) issues are born, she is subjected to both physical as well as mental cruelty by the revision-petitioner, who is a habitual drunkard.
(ii) The revision-petition filed his written statement and contested the proceed ing, his case being, in short, that the applicant-O. P. , having married him in accordance with his tribal customs and rites and having adopted Donyi Polo relig ion, has legally become a member of the tribal community of Arunachal Pradesh an d hence, the said Act, which governs marriages solemnized between Hindus, is not applicable to the case of the parties and the application seeking divorce / nul lity of marriage is not maintainable, the revision-petitioner is net a habitual drunkard and he never subjected the applicant-O. P. to mental and physical cruel ty.
(iii) In course of time and on insistence of the revision-petitioner, learned Co urt below heard the learned counsel for the parties on the question of maintaina bility of the proceedings and concluded, vide its order, dated 02. 05. 2002, afo rementioned that the applicant-O. P. was a Hindu at the time of her marriage wit h the revision-petitioner and that the proceedings would progress as per as the provisions of the said act.

(3) I have carefully perused the materials on record. I have heard Mr. T. Son, learned counsel for the applicant, and Mr. T. Michi, learned counsel, appearing on behalf of applicant-O. P.

(4) It is submitted, on behalf of the revision-petitioner, that there was over whelming materials on record to show that the applicant-O. P. had undergone marr iage with the revision-petitioner in accordance with tribal customs and rites of the revision-petitioner, she had adopted her husband's religion, namely, Donyi-Polo religion, she had obtained appointment as a teacher on the ground that she was a member of the local tribal community. In the face of all such materials, c ontends Mr. T. Son, it was incorrect on the part of the learned Court below to h old that the applicant-O. P. remained Hindu by faith and her marriage with the r evision-petitioner would be governed by the provisions of the said Act. In suppo rt of this contention, Mr. T. Son has the case of N. E. How Vs. Jahan Ara Jaipal singh (AIR 1972 SC 1840) wherein the apex Court has, I notice, laid down to the effect that even if a female is not a member of a tribe by virtue of birth, she , having been married to a tribal after due observance of all formalities and af ter obtaining the approval of the elders of the tribe, would belong to the triba

l community to which her husband belongs on the analogy of the wife taking husba nd's domicile. Mr. T. Son has, therefore, submitted that the impugned order be s et aside and the proceeding, in question, be quashed.

(5) Controverting the above submissions made on behalf of the revision-petitio ner, mr. Michi has submitted that this revision is not maintainable inasmuch as regulation 48 of the said Regulations provides for appeal to the High Court agai nst every decision of the Deputy commissioner. It is contended by Mr. Michi that the materials on record clearly reveal that the applicant has remained a hindu by faith and the revision-petitioner's assertions made contrary thereto is compl etely false inasmuch as the applicant-O. P. never declared, at any stage, that s he has ceased to be a Hindu by faith and/or that she had adopted her husband's f aith. Notwithstanding, therefore, her marriage with the revision-petitioner, the matrimonial proceeding, in question, was submits Mr. Michi, valid and the learn ed court below acted within the ambits of law in passing the impugned order hold ing to the effect that the proceedings were maintainable.

(6) Before coming to the merit of the impugned order, it is apposite to mentio n that Regulation 48 lays down that an appeal shall lie to the High Court from a n 'original decision' of the Deputy commissioner if the value of the suit is not less than Rs. 500 or if the suit involves a question of trial of rites and cust oms or of the right to, or possession of, immovable property. Regulation 50, whi ch contains the Visional powers of the High Court, provides, I notice, that the High Court may, on application or otherwise, call for the proceedings of any ori ginal case or appeal decided by the Deputy Commissioner and not appealable under these Regulations and may pass such orders as it may deem fit.

(7) A combined reading of Regulation 48 and 49 shows that revision will lie on ly when no appeal is provided for. However, an appeal will lie only against an o riginal decision. The use of the expression \original decision\ does not mean th at every interlocutory or interim or intermediate order passed during the course of a suit or trial will fall within the purview of the expression \original dec ision\ occurring in Regulation 48; it, rather, means the ultimate decision, whic h is reached in any suit or proceeding covered by the said Regulations, and conc ludes/terminates the suit/proceedings as far as the Court of the Deputy commissi oner is concerned.

(8) In the case at hand, the impugned order was, admittedly passed at an inter locutory stage, i. e. during the course of matrimonial proceeding. This order ca nnot be equated with the expression \original decision\ of the Court envisaged b y Regulation 48. In short, the impugned order is not an original decision within the meaning of Regulation 48.

(9) It may be pointed out that in the course of a proceeding or trial, the Cou rt may keep passing several orders and every such order will call for taking a d ecision including the decision, which a Court may have to take, on the question whether adjournment is to be granted or not, but all these orders, though call f or decisions, are not really the original decision and it is only that order, wh ich is passed, at the conclusion of the trial or proceeding, disposing of the su it or proceeding, that can be treated as original decision of the suit or procee ding. Viewed from this angle, it is clear that the impugned order is not an orig inal decision within the meaning of the expression \original decision\ contempla ted under Regulation 48.

(10) It logically follows from the above discussion that against the impugned order, no appeal is provided for and, hence, a revision will lie.

(11) However, turning to the merit of the impugned order, what attracts my eye s, most prominently, is that the impugned order decides the question of maintain ability of the proceeding. This shows that the impugned order has decided the is

sue of maintainability of the proceeding as a preliminary issue. It is trite tha t a preliminary issue can be framed and decided only if the issue is an issue of law and not of facts and that if the issue is an issue of fact or if the issue is an issue involving mixed question of facts and law, no preliminary issue can be framed and no such issue can be decided during the course of the trial or pro ceeding.

(12) There is no dispute before me that the question, which the impugned order aimed at deciding, involved determination of the question whether the applicant -O. P. had remained a Hindu even after her marriage with the respondent-petition er and this question, concedes learned counsel for the parties appearing before me, required a decision on mixed question of facts and law. It is, thus, clear t hat in the \case at hand, the question of maintainability, in the facts and circ umstances of the case, could not have been decided as a preliminary issue during the course of the proceeding. Looked at from this angle, the impugned order is not sustainable inasmuch as it has the effect of deciding whether the applicant- O. P. had remained a Hindu after her marriage with the respondent-petitioner.

(13) Situated thus, this Court is constrained to hold, and I do hold, that the learned Court below acted contrary to law and exercised its jurisdiction with m aterial irregularity in passing the impugned order. Hence, the impugned order ca nnot be allowed to stand good on record.

(14) In the result and for the reasons discussed above, while partly allowing the revision and setting aside the impugned order, the learned Court below is he reby directed to proceed with Misc. (Divorce)Case No. 02/2001 aforementioned and dispose of the same, in accordance with law, after recording evidence.

(15) For the purpose of expeditious disposal of the proceedings, the parties t o the proceeding are directed to appear in the learned Court below on 02. 09. 20 02.

(16) Send back forthwith the case record with a copy of this judgment and orde r to the learned Court below.