



C.M.A.(MD).No.403 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.12.2023

PRONOUNCED ON : 30.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.403 of 2020

S.Megala ... Appellant

Vs.

S.Sony Karkada @ Immanuel Gladston Karkada ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act, 1869, to set aside the fair and decretal order dated 11.03.2020 in I.D.O.P.No.85 of 2018 on the file of the learned Principal District Judge, Dindigul.

For Appellant	: Mr.R.Maheswaran
For Respondent	: Mr.S.Pon Senthilkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/petitioner/wife, challenging the order passed by the learned Principal District Judge, at Dindigul in I.D.O.P.No.85 of 2018 dated



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2.For the sake of convenience, the parties are addressed herein as per the rank in I.D.O.P.No.85 of 2018.

3.The brief facts leading to the filing of I.D.O.P.No.85 of 2018 is as follows:-

The petitioner states that the respondent is the husband of the petitioner. The petitioner is an orphan and she was brought up at Dhonavur Orphanage, Tirunelveli. In the year 1998, with the help of friend Jeyaleela, she joined as a Manager at Sunny estate belonging to the respondent husband. The respondent was already married to Dr.Mary Rana bai. The respondent husband already got divorce from Dr.Mary Ranabai in the year 1984 and thereafter, he has been living alone from 1984. While so, the petitioner was appointed as the Manager of the respondent in 1988 and she started taking care of the respondent. Under such circumstances, the petitioner and the respondent developed intimacy between each other with the extent of having sexual relationship and thereafter, the petitioner and the respondent solemnized their marriage on



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15.08.1989. They married as per Christian rites and customs in the presence of the Christian Registrar of the Marriages and other two witnesses and the same was duly recorded by the marriage solemnizer in the Register of marriages. From the date of marriage, the petitioner and respondent were living together as legally wedded wife and husband leading a happy marital life for more than 25 years. However, they have no issues. In the year 2016, the respondent started to develop illegal relationship with one Kirubai Lily, who was working as Nurse at Dubai. Apart from owning a farm in the name of Sunny Estate and Caroline farms at Austinpatty, the respondent is also running two hotels namely New Royal Hotel and Hotel Mahima and he is earning a sum of Rs. 2,00,000/- per month. He is a man of gaiety who extravagantly expend money on various women as per his sweet will and thereby, satisfying his lust. Whenever the petitioner interfered with his enjoyment, she was subjected to harassment and she was brutally assaulted several times. On one such occasion, on 09.01.2018, not able to withstand the gravity of cruelty inflicted on her, she lodged a complaint before the All Women Police Station, Kodaikanal. In the mean time, she fell down and sustained injuries at her neck. For which, she has taken treatment and thereafter,



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she was not able to involve in frequent intimacy with the respondent. As the result of which, the respondent drove her out of her matrimonial home on 01.07.2018. Though the petitioner has lodged a complaint on 02.07.2018 before the Superintendent of Police, Dindigul against the respondent, no action was taken against him. From the date of desertion, the petitioner has been struggling for her livelihood and hence, she filed an application under Section 125 of the Criminal Procedure Code, before the learned Judicial Magistrate, Kodaikanal seeking maintenance. The sole intention of the petitioner is to live and die as the wife of the respondent dutifully and hence, she took several steps to resume the matrimonial ties with the respondent and all of which, failed and hence, she filed this petition for restitution of conjugal rights.

4.The respondent husband had filed a counter denying all the allegations in the petition. It was pleaded by the respondent that the petitioner being an orphan, who suffered from many diseases including eye, skin, fever, tonsils problem, etc., she was brought to the petitioner's Sunny Estate by one Jeyaleela Karunya from Dhonaver Orphanage in the month of May 1988 exclusively for the purpose of working as a house



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maid thereby, taking care of the household works of the respondent. The respondent sympathetically engaged the petitioner as his house maid and provided her with food, shelter and dress and medical treatment and monthly salary of Rs.650/- and gradually her salary was increased from time to time and lastly she has drawn a salary of Rs.3,000/- per month. Even though she was a servant, she used to address the respondent as 'daddy'. The question of appointing the petitioner as the Manager of the respondent never arose, she had been his servant from the year 1988 till 13.07.2018. The allegation made by the petitioner recklessly that there had been sexual relationship between the petitioner and respondent is highly condemnable and the marriage certificate as produced by the petitioner is a forged one. The petitioner had never been the wife of the respondent at any time. However, with the malafide intention, she herself had given particulars for the ID card of Voter card and Aadhaar card as the wife of the respondent. Even though the respondent had taken care of the petitioner with kind heart like a daughter, she had continuously indulged in misbehavior and misappropriation against the respondent. The respondent had also sent several registered letters to her and the same were duly served and thereafter, she had sought apology and



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continued as servant under the respondent till April 2018. The petitioner has also filed petitions seeking maintenance under Section 125 of the Criminal Procedure Code and domestic violence cases as against the respondent for the purpose of getting huge amount and immovable property from the respondent. All the litigations were initiated by the petitioner with the malafide intention of looting the various properties of the respondent.

5.The learned trial Court has framed two issues. The petitioner was examined as P.W.1 and four documents Ex.P1 to Ex.P4 were marked on the side of the petitioner. The respondent was examined as R.W.1 on the side of the respondent and 22 documents Ex.R1 to Ex.R22 were marked. The learned trial Court has marked the marriage which was duly registered as per Marriage extract as Ex.P4. The petitioner's electoral card was marked as Ex.P2 and Aadhar card was marked as Ex.P3 wherein the respondent's name is mentioned as husband. The learned Trial Court recorded that the marriage between the petitioner and his wife Dr.Mary Ramabai was not at all dissolved. Though he filed S.M.O.P.No.1 of 1995 on the file of the learned Principal District Judge, Dindigul for



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dissolution of marriage, no divorce was granted in the said case.

Thereafter, the first wife died on 01.05.2015 and her death certificate was marked as Ex.R7. The respondent had contended that he had married Kirubai Lily on 20.09.2017 and he contended that the marriage was duly registered. The respondent has categorically submitted that the petitioner and the respondent had never been in sexual relationship with him at any point of time. The sole intention of the petitioner is to grab his money. All the documents showing the respondent as the husband of the petitioner are forged and fabricated. The respondent had made a representation to the District Collector to delete his name from being mentioned as the husband of the petitioner in her Electoral card and Aadhaar card. That apart the petitioner has filed D.V.O.P.No.6 of 2018 and M.C.No.2 of 2018 on filmsy grounds.

6.The leaned Trial Court also recorded that the respondent had contended that the petitioner had taken away Rs.50,000/- and went to one Chelladurai's house at Tirunelveli and thereafter, he has terminated her from service and did not turn up for work. Therefore, the sole intention of the petition seeking restitution of conjugal rights is with an intention



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to grab money alone. The learned trial Court also recorded the fact that S.M.O.P.No.1 of 1995 filed by the respondent seeking dissolution of marriage from his first wife was dismissed on 05.08.2002 as per Ex.R2 suit register extract. In the meanwhile, the respondent's first wife Dr.Mary Ramabai died on 01.05.2015 as per Ex.R6 death certificate. The petitioner has pleaded in the petition before the learned Judicial Magistrate in M.C.No.2 of 2018 that the marriage between the respondent and his wife was dissolved on mutual consent. But in her evidence, she has stated that 'எதிர்மனுதாரரின் முதல் மனைவி மேரி ரமாபாய் என்றால் சரிதான். அவர் இறந்துவிட்டார். மேரி ரமாபாய் இறக்கம் வரை எதிர்மனுதாரருக்கும் அவருக்கும் விவாகரத்து ஆகவில்லை என்றால் அது பற்றி எனக்குத் தெரியாது. விவாகரத்து ஆகி விட்டதாக என்கணவர் சொன்னார். மேரி ரமாபாய் 1.5.2015ல் இறக்கும்போது எதிர்மனுதாரரின் மனைவியாகத்தான் இறந்தார் என்றால் எனக்குத் தெரியாது. அவருக்கு விவாகரத்து ஆனதற்காக எந்த ஆவணமும் நான் பார்க்கவில்லை என்றால் நான் பார்க்கவில்லை.'

7.The respondent has filed Ex.R2 petition register to show that S.M.O.P.No.1 of 1995 filed by him against his wife Dr.Mary Ramabai for



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divorce was dismissed on 05.08.2002. Further the petitioner in her evidence deposed that “மதுரையில் எதிர்மனுதாரருக்கும் முதல் மனைவிக்கும் அடிதடி வழக்கு நடந்து வந்து நீதிதுறை நடுவர் நீதிமன்றத்தில் நிலுவையில் இருந்த போது நான் சாட்சி சொன்னேன் என்றால் சரிதான். 2014ல் நான் சாட்சியம் சொன்னேன். அந்த வழக்கு மதுரை ஆஸ்டின்பட்டியில் உள்ள கரோலினா பார்ம்ஸ் வீட்டில் நடந்த சம்பவம் தொடர்பாக நடந்தது என்றால் சரிதான். அப்போது நான் அந்த வீட்டில் இருந்தேன். நீதிமன்றத்தில் சாட்சியம் அளித்தபோது என் கணவர் பெயர் எதிர்மனுதாரர் என்று சொல்லவில்லை என்றும் நான் டோனாவூர் அனாதை ஆசிரமத்தில் வளர்ந்ததாக சொல்லியுள்ளேன் என்றால் சரிதான்.”

8.The learned Trial Court proceeded to conclude that the evidence of the petitioner would reveal that the respondent was living in Caroline farms. It was clearly observed by the learned Trial Court that the petitioner fully knowing the subsisting marriage between the respondent and his first wife, has vexatiously and falsely submitted that the respondent and his first wife got mutual divorce in the year 1984. On that basis, the learned Trial Court concluded that the said Dr.Mary Ramabai



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had been the wife of the petitioner till her death. It was further observed by the learned Trial Court that on perusal of Ex.P4, marriage certificate, signature of either party was not found in the certificate of marriage and further observed that the the petitioner failed to produce the original certificate of marriage. The learned Trial Court held that the respondent ought to have examined the person, who solemnized the marriage and atleast one of the witnesses to prove that the marriage was solemnized as per Ex.P4.

9.Considering the facts and circumstances of the case, the learned trial Court proceeded to conclude that Ex.P4 certificate of marriage was not true. The learned Trial Court finally inferred that though the petitioner did not examine any person to state that the petitioner and the respondent lived together as husband and wife, the petitioner was also not able to prove the marriage between the petitioner and the respondent. Though the petitioner claimed that the respondent chased her away from the matrimonial home, in the oral evidence she admitted that on 13.07.2018, she left home by given in writing to the respondent that she was leaving to Tirunelveli. From all the evidences, facts and



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circumstances of the case, the learned trial Court held that the marriage between the petitioner and the respondent was not solemnized and the petitioner was not able to prove the solemnization of the marriage with proper evidence and the learned Trial Court had dismissed the I.D.O.P.

10.Assailing the said judgment, the appellant/petitioner/wife has preferred this Civil Miscellaneous Appeal.

11.Heard Mr.R.Maheswaran, learned counsel appearing for the appellant and Mr.S.Pon Senthil Kumar, learned counsel appearing for the respondent and perused the entire materials available on record.

12.The learned counsel for the appellant/petitioner vehemently submitted that Ex.P1 to Ex.P3, electoral card, Aadhaar card and family card are reliable piece of evidence to prove her relationship with the respondent. He further contended that her case cannot be improved any further by bringing in any document which is not part of the record. Having hailed from a background with poor economic facilities, the respondent having utilised her in all aspects and exploited her sexually



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and abused her psychologically and has now deserted her. Hence, sought for setting aside the order passed by the learned Trial Court.

13.The learned counsel for the appellant/petitioner further vehemently submitted that the learned Trial Court ought not to have negated Ex.P1 electoral card, Ex.P2 Aadhaar card, Ex.P3 ration card and Ex.P4 photo copy extract of marriage before the learned Principal District Judge, Dindigul which was marked through P.W.1. Had the marriage between the respondent and his first wife Dr.Mary Ramabai subsisted even at the time when he lived with the petitioner, then obviously all the members of the family would have been enrolled in the electoral card and the absence of the same would prove that the respondent had been the husband of the petitioner. He further contended that the learned trial Court had misunderstood that she was paid salary for the household chores of the respondent. It is learnt from the evidence deposed by both the parties, it is only after the arrival of one Kirubai Lily, the respondent started to harass his wife, since the petitioner wife lodged a complaint before the All Women Police Station, Kodaikanal. Since the petitioner left her matrimonial home, no further



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criminal case was registered. He categorically contended that by all means, the petitioner had been the wife of the respondent and hence, sought for allowing the appeal.

14.Per contra the learned counsel for the respondent/respondent fully relying upon the verdict of the learned Trial Court pressed for dismissal of appeal.

15.The case in hand is a pathetic life of an orphan who was brought up in Dhonavur Orphanage at Tirunelveli District. On the guise of helping her out, one Jeyaleela took her from Dhonavur Orphanage and handed her over to the respondent for taking care of his household works.

16.A careful perusal of the materials available in record and I.D.O.P.No.85 of 2018 would reveal that on the date of filing of I.D.O.P., the petitioner was 54 years old and the respondent was 77 years old. No doubt the said Jeyaleela has handed over the petitioner at her age of 34 years to the respondent who was then 57 years. A copy of the letter



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written by the petitioner to the respondent on 13.07.2018 was marked as Ex.R13, in which the petitioner has referred the respondent as “ஐயா” and no where from the entire letter any word of intimacy between a husband and wife could be traced. That apart the marriage certificate marked as Ex.P4 was also not duly proved by the petitioner. Exploitation of women who are engaged as house maids for domestic work in private house by the employer landlord physically and sexually is not an unknown social problem.

17.The instant case in hand is the case of an orphan woman, who was engaged by the respondent as his house maid and had become intimate with the respondent. The submission of the petitioner having been sexually exploited by the husband in the name of fake marriage could not be negated. However, the petitioner miserably failed to prove the legality of the marriage, which was alleged to have been solemnized between her and the respondent on 15.08.1989. No doubt the marriage certificate of a Christian Marriage will have a separate column for the signature of the wedded couple. However, Ex.P4 marked by the petitioner was not signed by the petitioner and the respondent. That apart,



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the petitioner herself had admitted that the respondent was already married to one Dr.Mary Ramabai and they got mutual divorce in the year 1984. However, Ex.R2, I.e the suit register extract of S.M.O.P.No.1 of 1995 on the file of the learned District Judge, Dindigul, filed by the petitioner as against his wife Dr.Mary Ramabai seeking divorce would reveal that the said S.M.O.P. was dismissed on 05.08.2002. Hence, it is crystal clear that the marriage between the respondent and his wife Dr.Mary Ramabai is subsisting and in addition to that, the petitioner in her evidence admitted that she had deposed her evidence as witness in the year 2014, in an assault case pending before the learned Judicial Magistrate, at Madurai against the respondent's first wife and the said criminal case was with respect to an incident which happened in the house at Caroline farms at Austinpatty and that she was residing there at that time. In the said case, she had admitted that she never addressed the respondent as husband but on the other hand, she had deposed in her evidence that she was brought up in Dhonaver Orphanage.

18.In view of the said admission, it is needless to say that the petitioner had never been the legally wedded wife of the respondent and



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hence, the question of restitution of conjugal rights would not arise.

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19.In view of the same, I am not inclined to interfere with the order passed by the learned trial Court. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

30.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Principal District Judge, Thanjavur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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