

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1288 of 2014 and M.P.No.1 of 2014

Vijaya

.. Appellant/2nd Defendant

-Vs-

1. Pownammal

2. M.Loganathan

.. Respondents/Plaintiff/Ist Defenent

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the decree and judgment passed in A.S.No.3 of 2013 dated 04.08.2014 on the file of the Subordinate Judge at Vellore, confirming the decree and judgment passed in O.S.No.146 of 1996 dated 08.09.2009 on the file of the Additional District Munsif, Vellore.

For Appellant : Mr.R.Margabandhu

For Respondents : ...

J U D G M E N T

The 2nd defendant in O.S.No.146 of 1996 on the file of the learned Additional District Munsif, Vellore is the appellant herein. The 1st respondent is the plaintiff and the 2nd respondent is the 1st defendant in the said suit. The 1st respondent had filed the said suit for declaration declaring that she is the legally wedded wife of the 1st defendant and for consequential relief of permanent injunction to restrain the 2nd defendant, namely, the appellant herein from claiming the status of legally wedded wife of the 1st defendant. The suit was decreed by the trial court as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.3 of 2013 on the file of the learned Subordinate Judge, Vellore. By judgment and decree dated 04.08.2014, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me for admission and I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff before the trial court is that the marriage between her and the 1st defendant was celebrated at

Murugan Temple at Sathuvachari in Vellore on 03.07.1972 and out of the said wedlock, one daughter was born to them on 14.10.1981. While so, the 2nd defendant appears to have filed O.P.No.22 of 1992 on the file of the Subordinate Judge, Ranipet claiming that she is the legally wedded wife of the 1st defendant wherein she has further claimed that the marriage between her and the 1st defendant was celebrated on 05.09.1990 at Vallimalai. Based on the same, in the matrimonial proceedings, some relief was sought for and it also was decided in her favour. Armed with those orders of the matrimonial court as well as the Magistrate granting maintenance under Section 125 of Cr.P.C., now the appellant herein is making a claim that she has got the legal status of wife of the 1st defendant. According to the plaintiff, the 2nd defendant, namely, the appellant herein is not the legally wedded wife of the 1st defendant. Assuming that there was marriage on 05.09.1990, it is void as per Section 5 of the Hindu Marriages Act. Therefore, the plaintiff filed that suit for declaration declaring that she is the legally wedded wife of the 1st defendant.

4. The 1st defendant filed a written statement wherein he tacitly admitted that there was marriage between him and the plaintiff as it is claimed by the plaintiff. He further stated that since there was no male child, he married the 2nd defendant on 05.09.1990 at Vallimalai.

5. The appellant herein/the 2nd defendant in the suit disputed the marriage between the plaintiff and the 1st defendant. According to her, there was no such marriage at all. Therefore, the plaintiff has got no such legal status of wife of the 1st defendant. She further contended that she is the first wife of the 1st defendant and therefore, the suit is liable to be dismissed. She also contended that the 1st defendant had set up the plaintiff herein to file the suit only to thwart all the other matrimonial proceedings in the maintenance case.

6. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, two witnesses were examined including the plaintiff and as many as 18 documents were exhibited. On the side of the defendants, the 1st defendant was examined as D.W.1 and the 2nd defendant was examined as D.W.2. As many as 16 documents were exhibited. Having considered the same, the trial court found that the plaintiff is the legally wedded wife of the 1st defendant and the marriage between the 1st defendant and the 2nd defendant/appellant is void and therefore, the plaintiff is entitled for the decree as prayed. Accordingly, the trial court decreed the suit which was confirmed by the lower appellate court. That is how, the appellant/2nd defendant is before this Court with this Second Appeal.

7. In this appeal, the learned Counsel for the appellant would submit that there is no proof that there was any valid marriage between the plaintiff and the 1st defendant. Assuming that there was a female child born to them on 14.10.1981, that will not go to prove that there was valid marriage giving rise to the status of wife for the plaintiff. The learned Counsel for the appellant would also submit that only with a view to thwart the matrimonial proceedings and the maintenance proceedings, the 1st defendant has set up the plaintiff to file the suit and this is a collusive suit filed.

8. Of course, it is true that there were matrimonial proceedings as well as maintenance proceedings between the 1st defendant and the 2nd defendant and in all those proceedings, the 1st defendant lost his claim. The 2nd defendant, namely, the appellant succeeded in all those proceedings. But in those proceedings, the plaintiff was not a party. Therefore, any finding arrived at in the matrimonial proceedings and in the maintenance proceedings would not bind the plaintiff at all. The plaintiff claims to be the legally wedded wife of the 1st defendant and according to her, the marriage was in the year 1972. The plaintiff has produced a number of documents to show that the plaintiff was treated as the wife of the 1st defendant and there was also a child born to them out of the said wedlock.

9. Ex.A.1 is the Family Card which describes the plaintiff as the wife of the 1st defendant, Ex.A.3 is the birth certificate showing the birth of a female child which in turn would go to show that the father of the child is nonelse than the 1st defendant. The Voters List, Housing Board Application, Family Pension Entitlement Endorsement, LIC policy, Bank Pass Book and all the other documents would go to show that all through, the plaintiff was shown as the wife of the 1st defendant. The marriage invitation showing the marriage between the plaintiff and the 1st defendant has been marked as Ex.A.14. Assuming that the said document has been created for the purpose of this case, that will not go to nullify all the other documents which would go to show that prior to 05.09.1990, the plaintiff and the 1st defendant were living as husband and wife and they were treated as husband and wife by the society and there was also a child born to them. From these material evidences, two courts below have held that the plaintiff is the legally wedded wife of the 1st defendant and their marriage was prior to 05.09.1990. The marriage between the 1st defendant and the 2nd defendant, even according to the 2nd defendant was only on 05.09.1990. It is admitted by the 1st defendant that as on 05.09.1990, the marriage between him and the plaintiff was in subsistence. Therefore, this marriage is void as per Section 5 of the Hindu Marriages Act. Thus, the 2nd defendant cannot have the legal status of the wife of the 1st defendant under valid marriage. It may be true that she has succeeded in the matrimonial proceedings and the maintenance

proceedings. But they will not go to conclusively prove that she is the legally wedded wife of the 1st defendant. The judgments in those proceedings would not bind the plaintiff also. Thus, by going from cogent consideration of evidence available on record, two courts below have held that the plaintiff is the legally wedded wife of the 1st defendant. This is essentially a finding on facts and there is no law involved at all. I do not find any perversity at all in those findings as well.

10. The learned Counsel for the appellant would submit that in the matrimonial proceedings initiated under Section 125 of Cr.P.C. in the revision filed before this Court, this Court has held that the 2nd defendant is the wife of the 1st defendant.

11. In my considered opinion any such finding given in a proceedings under Section 125 of Cr.P.C. is not conclusive and the same does not bind the civil court because as per law, the civil court is called upon to decide the validity of the marriage since the dispute is civil in nature. Therefore, this argument is also rejected. To repeat I have to hold that there is no substantial question of law involved in this Second Appeal warranting admission of this Second Appeal.

12. In view of all the above, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District Munsif, Vellore.
 2. The Subordinate Judge, Vellore.
- 1 cc to Mr. .R.Margabandhu, Advocate, SR.No.4924

S.A.No.1288 OF 2014

tej (co)
pmk.28.2.2015