

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.10.2016

Pronounced on : 21.10.2016

CORAM

The Honourable MR. JUSTICE M. GOVINDARAJ

W.P.No.26871 of 2016

M.Sowndarya

... Petitioner

Vs

1. The Inspector General of Registration
O/o. The Inspector General of Registration
No.100 Santhome High Road,
Chennai-600 028.
2. The Marriage Registrar
District Registrar Office,
Chennai North, Chennai.
3. T.Mohamed Fahmi
4. Thiru.K.Ameer Batcha
Advocate,
No.59 Moore Street,
Parrys, Chennai - 600 001.
5. The Bar Council of Tamil Nadu
and Puducherry, Rep by its Secretary,
High Court Buildings
N.S.C. Bose Road, Chennai - 104.

... Respondents

R-4 & R-5 is suo-motu impleaded as per Order Dated: 02/08/2016
by M.S.N.J in WP.No.26871 of 2016

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the Certificate of Registration of Marriage in Serial No.4624/2014 dated 15.9.2014 on the file of the 2nd respondent, quash the same and consequently direct the 1st respondent to delete and remove the same from the Marriage Register within a period stipulated by this Hon'ble Court

For Petitioner : Ms.D.Geetha

For RR 1 & 2 : Mr.S.Pattabiraman
Government Advocate

ORDER

Heard Ms.D.Geetha, learned counsel appearing for the petitioner and Mr.S.Pattabiraman, learned Government Advocate appearing on behalf of the respondents 1 & 2 and Mr.S.Y.Masood, learned counsel appearing for the fifth respondent.

2. The writ petitioner is an Engineer by profession and she was appointed as a trainee engineer in M/s. Coastal Energen Pvt. Ltd at Tuticorin. The 3rd respondent was employed as HR Executive in the same company. The petitioner wanted transfer to Chennai from Tuticorin office and the 3rd respondent had informed her that he will find an appropriate placement for the petitioner at Chennai. Believing his words the petitioner went to Chennai on 15.09.2014 from Tuticorin. The 3rd respondent had taken the petitioner to the Company Office at Egmore.

3. It is the case of the petitioner that the 3rd respondent had obtained signatures and thumb impressions of the petitioner in a couple of papers in order to register the transfer from Tuticorin to Chennai. Thereafter, the petitioner went back to Tuticorin. After a couple of days the 3rd respondent informed the petitioner that the process of transfer would take time since there were no immediate vacancies in the Chennai office. Since the petitioner could not cope up with the work pressure at Tuticorin, she left the company in the month of March 2015.

4. It is further stated that the petitioner checked her name in the voter's list, during the month of May 2016 for the ensuing Assembly elections, wherein her name was deleted. On further enquiry, it was found that her name was enlisted in Srivaikundam Constituency. When she obtained a copy of the voter identity card, she was shocked to note that she was described as the wife of the 3rd respondent.

5. The petitioner would further state that she had never been married to the 3rd respondent and had never visited any Marriage Registration office. The 3rd respondent had misused the signatures and thumb impressions obtained from her at Chennai and had registered the marriage before the 2nd respondent on the same day viz., 15.09.2014 itself. The 3rd respondent had further informed her that he had included her name as his wife in the Passport as well as in the Family card also.

6. The petitioner warned the 3rd respondent that it was an illegal act and an act of forgery and demanded him to initiate appropriate proceedings to cancel the marriage registration.

But, on the other hand, the 3rd respondent threatened her with dire consequences, if she try to get away from him and marry anyone else.

7. The marriage was registered under Serial No.4624/2014 dated 15.09.2014 at the second respondent office. Aggrieved over the illegal registration, the petitioner has preferred the above writ petition.

8. This Court by its order dated 02.08.2016, suo motu impleaded the respondents 4 and 5 and issue notice to them. When the matter was taken up for hearing, Mr.S.Y.Masood, learned counsel appearing for the 5th respondent would state that the 4th respondent was a person known for his chamber activities of solemnizing and registering the marriages. He would further brought to notice that judgments of this Court reported in (2014) 5 LW 207 dated 17.10.2014 [S.Balakrishna Pandiyan and R.Ram Prasath vs. Superintendent of Police, Kanchipuram] wherein, the name of 4th respondent is found and that he is said to have solemnized lot of marriages at the chambers and acted as priest, contrary to his oath taken before the Bar Council. The learned counsel for the 5th respondent would further stated that the respondents 3 and 4 will not also appear before this Court, as the marriage was not legal.

9.The Division Bench of this Court has arrived at a finding, which is as follows:

"(a) Marriages performed in secrecy in the chambers of Advocates and Bar Association Rooms, will not amount to solemnization and only women, who are victims of such marriage can question the same in matrimonial proceedings before the appropriate Court as a question of fact.

(b) No registration of marriage can be done under the Tamil Nadu Registration of Marriages Act, 2009 without the physical presence of the parties to the marriage before the Registrar, except under special circumstances after recording the reasons.

(c) If a complaint is made by a party to the marriage to the Bar Council of Tamil Nadu and Puducherry against a Priest-cum-Advocate, the Bar Council shall take appropriate action in accordance with law.

(d) On complaints lodged by the Registering Authorities seeking protection, the Police are directed to afford sufficient protection immediately."

10. The learned counsel for the petitioner had submitted that the respondents 3 and 4 have received notices, but still

remained absent. She would further contend that the marriage is illegal as it was held at the Chambers of the Advocate which is a private place and solemnized under Section 7A of Hindu Marriage Act which is a special provision regarding Suyamariyathai and Seerthirutha Marriages. Section 7A of Hindu Marriage Act will apply only for the marriages solemnized between the Hindus, whereas the present marriage is between a Muslim and Hindu, which is not at all sustainable in law and hence, the same is null and void and a special Act is available for such inter-religious marriages, viz., the Special Marriage Act. In the Marriage Registration Certificate, the 3rd respondent has shown his religion as "Muslim" and the petitioner as "Hindu". She would further contend that the petitioner had neither went to the 4th respondent Chambers nor to the Registrar's office. The entire occurrence had taken place totally without her knowledge and consent and that the 3rd respondent has played fraud on her.

11. As stated supra, the Division Bench of this Court had given a finding that the marriages performed in secrecy in the Chambers of Advocates and in Bar Association rooms, will not amount to solemnization and only women, who are victims of such marriage can question the same in matrimonial proceedings before the appropriate Court as a question of fact.

12. The above said facts narrated, would clearly show that the petitioner is entitled for the relief sought for in the writ petition to cancel the Certificate of Marriage registered under Registration No.4624/2014 dated 15.09.2014 on the file of second respondent and to the consequential direction to delete, cancel and remove the same from the marriages' records maintained by the 2nd respondent. There is no counter affidavit from the official respondent forthcoming and the respondents 3 and 4 are conspicuous by their absence. The learned counsel appearing for the 5th respondent has rightly pointed out that they would not appear for the reasons well known.

13. Therefore, the ratio laid down by the Division Bench of this Court would entitle the petitioner to get the relief. In an identical situation, this Court in WP No.34508 of 2015 had granted the relief by its order dated 05.01.2016, cancelling the registration of the fraudulent marriage. This Court also concur with the findings of the learned Single Judge and find it is unfair to direct the petitioner to go to the Court concerned seeking a divorce and to declare the proceedings as null and void, causing further mental agony to the petitioner.

14. In view of the the earlier judgments passed by this Court [cited supra], the writ petition stands allowed by quashing the registration of marriage under Serial

No.4624/2014 dated 15.09.2014 on the file of 2nd respondent and with the further direction to the first respondent to delete, cancel and remove the same from the marriage register within a period of six (6) weeks from the date of receipt of copy of this order.

15.The Writ Petition is ordered accordingly. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Inspector General of Registrations
O/o. The Inspector General of Registration
No.100 Santhome High Road,
Chennai-600 028.
2. The Marriage Registrar
District Registrar Office,
Chennai North, Chennai

+1cc to Ms.D.Geetha, Advocate, S.R.No.60442
+1cc to Mr.S.Y.Masood, Advocate, S.R.No.60449

W.P.No.26871 of 2016

SSK(CO)
CA(21/11/2016)

सत्यमेव जयते

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