

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.574 of 2016
and C.M.P.No.7609 of 2016

The Registrar General of Birth
Deaths and Marriages
Santhome High Road
Chennai 600 028

..Appellant

Vs.

Audrey Martina

..Respondent

Writ Appeal No.574 of 2016 filed under Clause 15 of Letters Patent against the order dated 10.03.2015 made in W.P.No.29742 of 2013. Petition filed under Article 226 of the constitution of India to issue a writ of certiorarified Mandamus calling for the entire records in Lr. NO. 50195/G2/2012 dt 19.10.2012 from the file of the respondent quash the same and further direct the respondent to make an entry in the Register of Births Deaths and Marriages maintained at his office cancelling the Marriage Certificate in Sl. No.69 dt 14.2.2009 issued by the ICM (Indian Christian Marriage) Marriage Registrar Rev.A.M.Cedric Beno and make suitable entries therefor in the Register of Marriages maintained at his Office on the basis of the judgement and decree dt 13.12.2010 in O.S. No.90 of 2009 on the file of the Principal Family Court Chennai

For appellant : Mrs.Srijayanthi,
Special Government Pleader

For respondent : Mr.D.Shivakumaran

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

This writ appeal is filed by the Registrar General of Birth, Deaths and Marriages, the State Authority as against the observation made by the learned Single Judge to make proper entry in the register stating that the marriage solemnised between the respondent/writ petitioner/Audrey Martina and one Prabhu was cancelled and the certificate has also been declared as null and void.

2. In the Writ petition filed by the respondent herein viz., Audrey Martina, in W.P.No.29742 of 2013, she prayed for quashing the order passed by the Registrar General of Birth, Deaths and Marriage/appellant herein, dated 19.10.2012 by cancelling the Marriage Certificate in Sl.No.69 dated 14.02.2009 issued by the Indian Christian Marriage Registrar Rev.A.M.Cedric Beno, by taking into consideration the judgment and decree dated 13.12.2010 in O.S.No.90 of 2009 on the file of Principal Family Court, Chennai.

3. According to the respondent herein/writ petitioner, one B.Prabhu kidnapped her and created documents with connivance of one Rev.A.M.Cedric Beno as if she was married to Prabhu, against which she filed a suit in O.S.No.90 of 2009 on the file of Principal Family Court, Chennai, to declare the marriage dated 14.02.2009 between her and the said Prabhu as null and void and sought for cancellation of the said marriage certificate. The Family Court, Chennai, passed a judgment and decree on 13.12.2010 by which the marriage was declared as null and void and the certificate also duly cancelled.

4. The learned Special Government Pleader appearing for the appellant/state submits that the alleged marriage was solemnized as per the Indian Christian Marriage Act, 1872, and as per Rule 89 of the Civil Rules of Practice and Circular Orders, any instrument affecting immovable property registered under the Indian Registration Act, 1908, is set aside, discharged or cancelled by an order or decree of a civil court, the court shall forthwith cause a copy of the decree or order to the registering officer, provided where such order or decree is modified, set aside or reversed, copies of further orders and decrees shall also be forwarded to the registering officer. However, that procedure is contemplated in respect of immovable property and not in respect of birth, death or marriages.

5. Having heard the counsel for the respective parties, it is useful to extract Section 89 of the Civil Rules of Practice and Circular Orders as under:-

"Where any instrument affecting immovable property registered under the Indian Registration act, 1908 is set aside, discharged or cancelled by an order or decree of a Civil Court, the Court shall forthwith cause a copy of the decree or order drawn up on plain paper to be forwarded to the registering officer, provided where such order or decree is modified, set aside or reversed, copies of further orders and decrees shall also be forwarded to the registering officer."

6. On a reading of the above section, it is clear that where any instrument affecting immovable property registered under the Indian Registration, 1908, is set aside, discharged or cancelled by an order or decree of a civil court, the court shall forthwith cause a copy of the decree to the registering officer, provided where such order or decree is modified, set aside or reversed, copies of further orders and decrees shall also be forwarded to the registering officer. Hence, as per the civil rules of practice, it is made specific in respect of immovable properties that when status is altered by virtue of a decree or order, necessarily to protect the interest of parties, proper entry has to be made as per the modification or otherwise of the earlier position. In the instant case, as per the Indian Christian Marriage Act, 1872, Marriage Certificate in Sl.No.69 dated 14.02.2009 was issued as if marriage between the respondent herein viz., Audrey Martina and one Prabhu was solemnized. The respondent herein/Audrey Martina, challenged the said Marriage Registration and filed a suit in O.S.No.90 of 2009, wherein, the Principal Family Court, Chennai, declared the marriage as null and void and the certificate was also duly cancelled. Thereafter, the respondent's request towards effecting the proper entry was rejected by the appellant herein/state, hence, the respondent approached this court by way of W.P.No.29742 of 2013, wherein, this court set aside the impugned order of rejection order passed by the Registrar General of Births and remitted the matter for fresh consideration and further observed to make proper entry in the register stating that the marriage has been cancelled and the certificate has also been declared as null and void.

7. In our considered view, the order passed by the learned Single Judge will not in any way cause any prejudice to the State rather subsequent entry of the dissolution of marriage would clarify the modified position regarding marriage. In that view of the matter, we do not find any illegality or irregularity in the order passed by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To

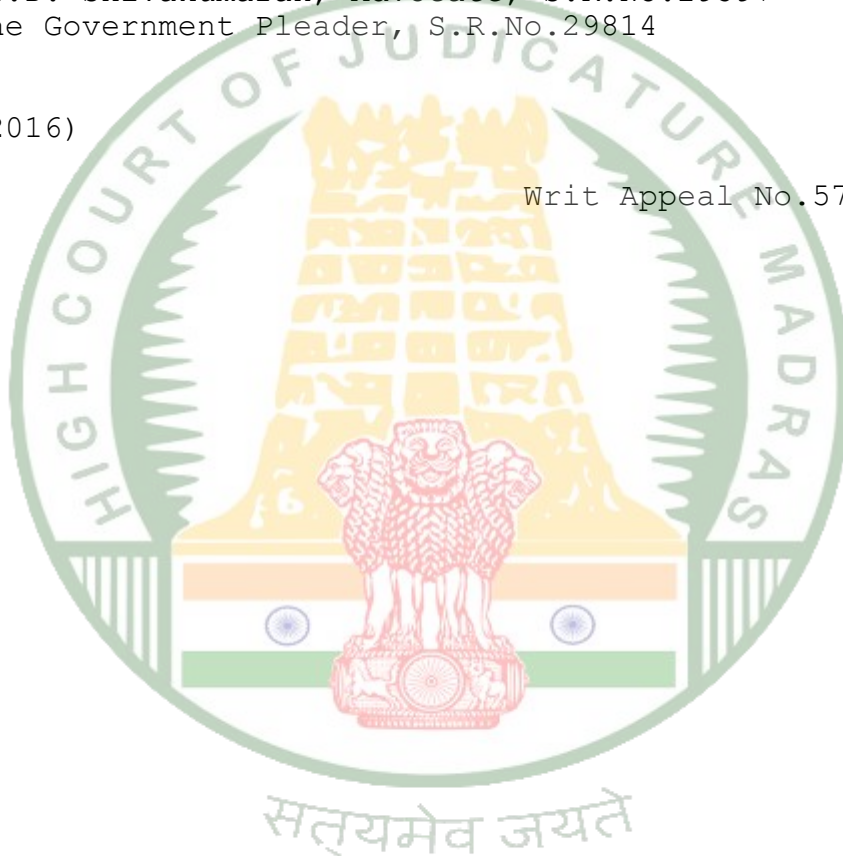
The Registrar General of Birth
Deaths and Marriages
Santhome High Road
Chennai 600 028.

+lcc to Mr.D. Shivakumaran, Advocate, S.R.No.29597

+lcc to the Government Pleader, S.R.No.29814

VD(CO)
EU(17/06/2016)

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