

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1935 of 2017
and C.M.P.Nos.10425 and 10426 of 2017

G.Nithila Appellant / Petitioner

Vs.

E.Marimuthu ... Respondent / Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, challenging the Order, dated 09.06.2017 passed in O.P.No.4037 of 2015 on the file of the learned II Additional Judge, Family Court, Chennai.

For Appellant : Mr.T.S.Rajamohan

For Respondent : Mr.A.M.Natraj

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal has been directed against the dismissal order passed by the II Additional Family Court, Chennai on 09.06.2017 in O.P.No.4037 of 2015 at the instance of the wife.

2. The appellant / petitioner filed petition before the Family Court under Section 12 (1) (c) of the Hindu Marriage Act, seeking to annul the marriage that was registered on 09.04.2014 between the appellant and the respondent. It is averred in the petition that the respondent expressed his liking over the petitioner at the time when the appellant / petitioner was about to complete her Plus Two. Both the appellant / petitioner and the respondent are athletes. Even after perusing her degree course, the respondent compelled the petitioner to talk to him and many times he would threaten that if the petitioner does not talk to him he would commit suicide. On 08.04.2014, the respondent requested the petitioner to wear saree and come along with him on 09.04.2014 to visit a temple. But on 09.04.2014, the

respondent took the appellant / petitioner straight away to the office of the Registrar, Guduvancherry and compelled the petitioner to agree for registration of marriage under the threat that he would commit suicide, if she does not agree for registration. The respondent manipulated the record as if the marriage between the petitioner and the respondent took place at Pudhupalayathamman Alayam, Nandivaram, Guduvancherry on 12.03.2014. But on 12.03.2014, the petitioner was attending her work and the same is entered by the Register maintained by her employer. There was no solemnization of marriage and there was no cohabitation between the petitioner and the respondent. The appellant / petitioner was just interacting with the respondent out of the sheer infatuation. Therefore the registration of the marriage between the appellant / petitioner and the respondent on 09.04.2014 is sheer nullity in the eye of law.

3. The respondent in his counter denied the averments made by the appellant / petitioner as to the alleged fraud. The marriage was well planned by the appellant / petitioner as well as the respondent and the appellant on 03.02.2014 sent her ration card and Voter ID scan copies to the respondent's email address. After the register marriage on 09.04.2014, the appellant / petitioner and respondent celebrated the wedding at their friends house. The appellant / petitioner during her training period with her employer went out with the respondent after punching her finger print in the biometric device. Tying of Thaali or exchange of garlands are not at all necessary for registered marriage as per law. After the marriage, the appellant and respondent lived as husband and wife and due to the matrimonial life, the appellant got pregnant. Therefore the petition is liable to be dismissed.

4. On the side of the appellant / petitioner, the petitioner was examined as P.W.1 and 2 Exhibits were marked. The respondent examined himself as R.W.1 and on his side, 9 Exhibits were marked. The learned trial Judge after analysing both the oral and documentary evidence, dismissed the petition. Aggrieved by the order, the petitioner preferred this Civil Miscellaneous Appeal.

5. The learned counsel appearing for the appellant mainly argued that there is no evidence for solemnization of marriage and the respondent played fraud upon the appellant / petitioner and got it registered before the Marriage Officer.

6. The learned counsel appearing for the respondent argued that the petition under Section 12 (1) (c) is not maintainable and it is time barred. Further it is argued that as per Section 7 (a) of the Act, marriage registered before the

Marriage Officer in the presence of the friends is valid in law.

7. The foremost point is whether the petition filed under Section 12 (1) (c) of Hindu Marriage Act, 1955 has been filed within time.

8. Admittedly the marriage was registered between the appellant and the respondent on 09.04.2014 before the Marriage Officer, Guduvancherry in S.No.26 of 2014. The copy of Marriage Registration Certificate is marked as Ex.P.2. It is the case of the appellant / petitioner that the respondent though asked her to come to visit a temple, he straight away took her to the Registrar Office by compulsion and threatened that he would commit suicide if she does not agree for registration and thus the respondent got the marriage registered by committing fraud on the appellant / petitioner.

9. The appellant / petitioner examined as P.W.1 says in her cross-examination that she did not prefer any complaint with the police as to the fraud. The appellant / petitioner filed the petition to declare the marriage that was registered on 09.04.2014 a nullity under Section 12 (1) (c) of Hindu Marriage Act on 15.10.2015.

10. Section 12 (2) of the Hindu Marriage Act, 1955 reads thus :

"Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage -

(a) on the ground specified in clause (c) of sub-section (1), shall be entertained if -

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;"

11. In this case, the appellant / petitioner has not come to the Court within one year either from the date of compulsion that had ceased or discovery of the fraud.

12. Further it is the case of the appellant / petitioner that there was no consummation. But Ex.R.8 Laboratory Report of Dr.Kamatchi Memorial Hospital Private Ltd., Chennai of the appellant / petitioner dated 25.04.2014 discloses that pregnancy test is positive. Thus the petition is not maintainable, in view

of Section 12 (2) (a) (i) and (ii) of Hindu Marriage Act, 1955 as the petition was not filed within one year from the alleged fraud and the spouses also lived as husband and wife after the alleged fraud as could be seen from Ex.R.8.

13. It is needless to mention that as per Section 7 (A) of Hindu Marriage Act, 1955, solemnization of marriage in the presence of relatives, friends or other persons by declaring that each takes the other to be his wife or as a case may be her husband is suffice.

14. The trial Court has rightly dismissed the petition and this Court does not see any reason to interfere with the order of the trial Court and accordingly, the Civil Miscellaneous Appeal is liable to be dismissed.

15. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the Order, dated 09.06.2017 passed in O.P.No.4037 of 2015 on the file of the learned II Additional Judge, Family Court, Chennai. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

tsvn
To

1. THE II ADDITIONAL JUDGE
FAMILY COURT,
CHENNAI.

2. THE SECTION OFFICER, सत्यमेव जयते
V.R. SECTION, HIGH COURT, MADRAS.

+1cc to Mr.T.S.RAJAMOHAN Advocate, S.R.No. 86111

+1cc to Mr.A.M.NATRAJ, Advocate, S.R.No. 85312

Judgment in
C.M.A.No.1935 of 2017

SS(CO)
TR(02/01/2018)