

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

S.A.No.487 of 2013

Thilagavathy

...Appellant/ Defendant

Vs

K.Rani

...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.09.2012 made in A.S.No.24 of 2011 by the Learned Subordinate Judge, Gingee conforming the Judgment and decree dated 09.11.2009 made in O.S.No.40 of 2007 on the file of District Munsif Court, Gingee.

For Petitioner : Mr.Vasudevan

For Respondent : No Appearance

JUDGMENT

The unsuccessful defendant in O.S.No.40 of 2007 has approached this Court by filing this Second Appeal against the Judgment and decree dated 18.09.2012 made in A.S.No.24 of 2011 by the learned Subordinate Judge, Gingee, confirming the Judgment and decree dated 09.11.2009 made in O.S.No.40 of 2007 on the file of District Munsif Court, Gingee. Learned counsel for the respondent did not appear today and therefore, the second appeal has been taken up for hearing on merits.

2. In this Second Appeal, notice was ordered on 25.04.2013 and the Second Appeal is pending since then. Now, it is take up for final hearing and is being disposed of by this judgment.

3. The case of the appellant/defendant in this present Second Appeal is that she is the legally wedded wife of one Kumar. The appellant/defendant belongs to Adi-Dravidar community and Kumar belongs to Vanniar community. They both fell in love with each other for a period of two years and on 08.03.1983, the appellant/defendant and Kumar got married at Arulmighu Vadapalani Temple, Chennai and started living together in a

house at Pallavaram. Four days after their marriage, the appellant/defendant's husband Kumar, on the pretext of going to shop deserted the appellant/defendant and did not return. In due course of time, the appellant/defendant came to know about the second marriage held between appellant/defendant's husband Kumar and the plaintiff/ Rani.

4. The appellant/defendant went to Theppirampattu village and approached the family members of Kumar and plaintiff, where she was ill-treated and threatened to leave the village and warned forcefully stating that she should not claim Kumar as her husband. Learned counsel for the appellant/defendant submitted that Theppirampattu villagers and the family members of Kumar knew about the marriage held between the appellant/defendant and Kumar prior to the second marriage of Kumar. Aggrieved by the above occurrences, the appellant/defendant left to Paruthipuram.

5. In 1993, appellant/defendant's husband Kumar went to Paruthipuram in search of the appellant/defendant and confessed that he wanted to live with the appellant/defendant as the plaintiff's behaviour was immoral and therefore, assured the appellant/defendant that he would take her to Chennai after some period of time. Till April 1995, Kumar did not turn back to see the appellant/defendant, but had written a number of letters where he has stated that the salary of Kumar has been collected by his second wife directly from the company of Kumar. Finally, in May 1995, Kumar came to Paruthipuram and took the appellant/defendant along with him to Chennai and started to live together at No.6, Balamurugan Nagar, Porur for a period of six months. But after six months, the plaintiff along with her mother came to Porur and created problems and took away Kumar along with her.

6. The appellant/defendant has filed M.C.No.4 of 1997 seeking maintenance and also filed a criminal case in C.C.No.427 of 1997 for the alleged offence committed by Kumar under Section 494 IPC. Meanwhile, the plaintiff had filed a suit in OS.No.87 of 2000 seeking a declaration that she is the legally wedded wife of Kumar and sought for interim stay of the above said criminal case in C.C.No.427 of 1997 in I.A.No.275 of 2000. An exparte order dated 16.06.2003 was passed in I.A.No.275 of 2000 by allowing the same. On the basis of the said order, on 16.11.2003, the maintenance case and the criminal case were dismissed. Against the said dismissal, two revisions were filed in CrI.R.C.No.23 and 24 of 2003 before the Additional Sessions Judge Cum Fast Track Court, No. I, Dindivanam. The said revisions were allowed on 05.03.2000. the Sessions Court, while dismissing the revision petition No.23 of 2003, has directed

that in O.S.No.87 of 2000, the appellant/defendant should be given an opportunity to put forth her case and till that the maintenance case would be kept pending.

7. The aggrieved appellant/defendant filed a petition before this Court to vacate the above said order. O.S.No.87 of 2000 was transferred from the District Munsif Court, Gingee and renumbered as O.S.No.40 of 2007 and the same is pending. C.C.No.427 of 1997 was renumbered as C.C.No.187 of 2004. A criminal revision case in No.819 of 2008 was filed before this Court and this Court had construed the domestic relationship between the appellant and Kumar as one of the domestic relationship/living together relationship and being the aggrieved person, the lower Court has rightly granted maintenance to the appellant/defendant herein and the Court is not inclined to interfere with the order of the lower Court.

8. The appellant/defendant further contended that in the written statement she has taken the plea that non-joinder of necessary party namely Kumar as a party to the suit in accordance with law and that the suit has got to be dismissed on that sole ground. The respondent herein has contended that she is the legally wedded wife of Kumar and that the marriage was performed as per hindu norms before the villagers and they have been living together as husband and wife. The trial court passed a judgment and decree dated 09.11.2009 in O.S.No.40 of 2007 granting relief to the plaintiff holding that the plaintiff is the wife of Kumar. The trial court has also discussed about the non-joinder of necessary party to the suit and admittedly.

9. Even though it is the contention of the plaintiff that Kumar is the husband, the appellant/defendant has not produced any document to prove that the appellant/defendant herein is stated to have married the said Kumar and the civil suit was filed on the basis of so called domestic relationship/ living together relationship. The Trial Court has also observed in the judgment and decree dated 09.11.2009 that Kumar and Rani were living together and that they have a daughter aged 17 years and a son aged 14 years.

10. Aggrieved by the judgment and decree in O.S.No.40 of 2007, the appellant/defendant has preferred an appeal in A.S.No. 24 of 2011 and the lower appellate Court came to the conclusion that there was a legal marriage held between the respondent Rani and Kumar as per the Hindu customary rights and that one Murugan, independent witness was also examined. Apart from marking of 10 exhibits, including the invitation card, the lower appellate Court confirmed the judgment and decree of the trial court holding that Kumar and Rani were living together after their legal marriage.

11. The learned Appellate Judge further discussed the fact that with regard to the marriage between appellant/defendant and Kumar, observed in paragraph 11 that the marriage did not take place inside the Temple and it appears to have taken place outside the Temple and there is no proof about the marriage and there is no receipt produced in order to establish the marriage between the appellant/defendant and Kumar. However, though contentions have been made with regard to marriage photographs, no photograph is made available. Another person Jessila has stated that the marriage has taken place at Arulmighu Vadapalani Temple, but no receipt was obtained from the Temple and no photograph was taken and that the marriage did not take place as per Hindu rites. Though it has been stated that the appellant/defendant and Kumar have been living together as husband and wife and said to have possessed ration card and voter's identity card, but the said documents have also not been produced.

12. The lower appellate Court has also confirmed the judgment and decree of the trial Court as there was no iota of evidence of marriage that is said to have taken place on 08.03.1983 and that even though 5 witnesses have been examined on the side of the appellant/defendant herein, none of the documents and evidence establish the case of the appellant confirming the marriage between the appellant/defendant and Kumar. That apart, the Courts below came to a conclusion that witnesses have given contra evidence, for example, one witness has said that photograph was taken, but not available and another witness has stated that photograph was not taken. It is also further held that no steps have been taken for 14 years by the appellant/defendant.

13. As stated supra, Kumar and plaintiff/ Rani have been living together as husband and wife, and out of their wedlock, they have got one daughter and a son, which has been accepted by the appellant/defendant's side during examination. While another contention was taken that Kumar married the plaintiff when she was under 16 years of age and hence, the marriage itself is illegal, for that contention, the Courts below held that there is no representation for holding that the marriage itself is illegal and if any representation was filed, the same would have been decided. The lower Court further held that the appellant/defendant did not lodge any complaint for more than 14 years.

14. To substantiate this fact that there is a legal marriage between Kumar and Rani, the learned counsel for the appellant/defendant has produced the judgment reported in 2010 (6) CTC 216 in the case of D.Velusamy vs. D.Patchaiammal in

Crl.A.No.2028-2029 of 2010 and referred to paragraphs 11 and 38 and the same are extracted below:-

"11. In our opinion, since Lakshmi was not made a party to the proceedings before the Family Court Judge or before the High Court and no notice was issued to her hence any declaration about her marital status vis-a-vis the Appellant is wholly null and void as it will be violative of the Rules of Natural Justice. Without giving a hearing to Lakshmi no such declaration could have validly be given by the Courts below that she had not married the Appellant herein since such a finding would seriously affect her rights. And if no such declaration could have been given obviously no declaration could validly have been given that the Appellant was validly married to the Respondent, because if Lakshmi was the wife of the Appellant then without divorcing her the Appellant could not have validly married the Respondent.

.... 38. Coming back to the facts of the present case, we are of the opinion that the High Court and the learned Family Court Judge erred in law in holding that the Appellant was not married to Lakshmi without even issuing notice to Lakshmi. Hence, this finding has to be set aside and the matter remanded to the Family Court which may issue notice to Lakshmi and after hearing her give a fresh finding in accordance with law. The question whether the Appellant was married to the respondent or not can, of course, be decided only after the aforesaid finding."

15. It has been categorically held in that case that the Apex Court has held that, in a declaratory relief like the present one on hand, the spouse ought to have been made as one party and after the filing of suit, regarding marital status, without marriage spouse is invalid and that actually as claimed by husband, the spouse was a necessary party to be decided. No doubt, in the present case on hand, the husband has not been made as a party. Even though there is no specific stand taken by the appellant/defendant herein that the plaintiff should make her husband as party, without him being a party, the plaintiff has accepted the relationship of marriage between the plaintiff and Kumar. It is true that the plaintiff could have examined her husband. But in the case on hand, the appellant/defendant has not produced any iota of evidence to accept that there was a marriage between the appellant/defendant and Kumar. As many as 5 witnesses were examined and they have deposed contradiction, where one witness stated that the marriage took place inside the

Temple and another stated that the marriage took place outside the Temple.

16. Similarly, there is no receipt obtained for the marriage from the Temple authorities. One witness has deposed that photograph was taken but it is not available. Another witness says that no photographs have been taken. In this regard, it is worthwhile to mention a decision of the Supreme Court in the judgment reported in 2002 (3) SCC 533 (Padma Sundara Rao Vs. State of T.N.), wherein it has been held as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

From the above said decision of the Supreme Court in *Padma Sundara Rao's case* (cited supra), it is clear that if a decision is relied on by a counsel, its applicability to the facts of the case, has to be verified and without verifying the facts of the case, the judgment cannot be followed.

17. Admittedly, the decision referred in 2010(6) CTC 216 will not be applicable to the facts of this case. It is no doubt true that in criminal revision before this Court, it is the contention of the appellant/defendant that they were living together as live-in relationship. But it is not established through the nature of marriage.

18. The verbal statements have not been established through documentary evidence and the Courts below have dis-believed the version of relationship in the nature of marriage.

In view of the discussion stated supra, I find that no

question of law, much less substantial question of law would arise for consideration. Hence, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

1.The Subordinate Judge,
Ginjee

2.The District Munsif,
Ginjee.

Copy to:

The Section Officer,
VR Section,
High Court, Madras

+1cc to M/s.Vasudevan & Priya, Advocate sr.43270

Judgment in
S.A.No.487 of 2013

mp(co)
ss(27/10/2017)

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