

In the High Court of Judicature at Madras
Dated: 03.01.2017
Coram
The Honourable Mr.JUSTICE B.RAJENDRAN

W.P.No.28569 of 2016

1 R.Sharmila

[PETITIONER]

Vs

1 The Inspector General of Registration,
100 Santhome High Road
Mylapore, Chennai-600 003

2 The District Registrar (Chennai North),
No.27, Rajaji Salai
Chennai-600 001.

3 The Marriage Officer and Sub-Registrar,
Sub-Registrar Office,
Ponneri,
Tiruvallur District.

4 Mr.D.George

5 P.Kannan [RESPONDENTS]

(R-5 is suo- motu impleaded as per order dated 26.08.2016 by
M.S.N. J in WP No.28569/2016.)

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari and mandamus to call for the records of the 3rd respondent pertaining to "Certificate of Marriage" registered under Registration No. 195 of 2014 dated 15.05.2014 quash the same and consequently direct the 3rd respondent to delete, cancel and remove the same from the Marriage records of the 3rd respondent office.

For Petitioner : Mr.V.Sanjeevi

For Respondents: Mr.S.Rajeswaran for R1 to R3
Special Government Pleader

ORDER

This writ petition is filed by the petitioner to challenge the Certificate of Marriage registered in Registration No.195 of 2014 dated 15.05.2014.

2. According to the petitioner, the fourth respondent has presented a Memorandum for an alleged marriage with the petitioner on 15.05.2014 under the Tamilnadu Registration of Marriage Act. According to the petitioner, there was no marriage between the petitioner and the fourth respondent especially on 15.05.2014 or any other date. In fact, the very registration of the alleged marriage is void for the simple reason that the fourth respondent has stated as a Christian and the petitioner is Hindu and therefore, there cannot be a valid marriage registered between them under the Hindu Marriage Act unless it is registered under the Special marriage Act. Even otherwise, the alleged marriage is said to have been taken place in hindu temple. According to them, such temple was never existed and the marriage took place before the Advocate who was present at the time of marriage. According to the petitioner, she was taken to the registration office and without knowing the implication, she signed in some papers. Since the marriage was solemnized neither under the Hindu Marriage Act or under the Special Marriage Act, authority ought not to have register the marriage. Duty is also cast upon the Marriage Registrar to verify as to whether any marriage has been taken place and therefore, the marriage registration is wrong. Hence, she filed the writ petition.

3. Though notice was issued and the same was served on the fourth respondent and his name is also printed in the cause list, he has not entered appearance conveniently.

4. This Court impleaded suo moto the name of the fifth respondent and he has also appeared and appologized before the court stating that by mistake, without verifying the letter and advise given by the advocate, he has registered and now he is retired. He pleaded not to take action against him. He has not filed any counter.

5. Learned counsel for the petitioner relies on the judgment of this court reported in 2016(1) CWC 446, S.Jeyanthi vs The Inspector General of Registration, for the proposition that when the marriage has been illegally conducted in the office of the advocates, such marriage should not be amount to solemnization and no registration could be made without physical presence of the parties. The petitioner also relied upon the judgment of the Hon'ble Supreme Court reported in 2009(1) SCC 714, Gullipilli Sowria Raj vs Bandaru Pavani Allias Gullipili Pavani,

whereby the Hon'ble Supreme Court has clearly held that solemnization of marriage between a hindu and another professing a different (Christian) as per hindu customs is void. In this case, neither hindu customs followed nor established, merely on the basis of a letter issued by the alleged advocate without even his address and enrollment number, the authority has registered the alleged marriage. Therefore, following the above decision of the Hon'ble supreme court, he would contend that the very marriage itself is void and therefore, he seeks to quash the Marriage Registration Certificate issued by the Registering Authority registering the same as marriage.

6. Heard the learned counsels appearing on either side and perused the materials on record.

7. First of all, the Fourth respondent before registering a marriage should have ascertained how a marriage could have taken place under the Hindu Law between a Hindu and Christian. Even niether the address nor enrollment number of the so-called advocate was given. The Advocated stated through his letter dated 15.05.2014 informing that the marriage had taken place between the petitioner and the fourth respondent at Sri Mundakanniamman temple as per Hindu Customs. The fifth respondent who was impleaded by this court, had registered the marriage merely on the basis of letter of the alleged Advocate and the receipt of the temple without enquiry and without ascertaining as to whether such marriage between hindu and Christian could be solemnized as per Hindu rites and customs under the Hindu Marriage Act. The fifth respondent, who is retired, has also apologized to the court and seeks pardon from the court. It is clearly dereliction of duty on the part of the fifth respondent. This court does not point out further anything in this matter. In the above decision of the Supreme Court in 2009(1) SCC 714, Gullipilli Sowria Raj vs Bandaru Pavani Allias Gullipili Pavani, it was held that since a marriage under the Hindu Marriage Act, 1955, could only be performed between two Hindus the marriage had been rightly declared to be a nullity by the High Court. In the above case, marriage was solemnized between a Roman Catholic Christian and a Hindu under hindu rites. Even unless he converts into Hindu, such registration will not validate the marriage. In this case, marriage itself has not been proved.

8. In another matter, 2014 (3) MWN (Cr.) 616 (DB), Balakrishnan Pandiyan, S. vs. The Superintendent of Police, Kanchipuram, this court deprecated the act of the advocates doing marriages in their chambers without even presence of the authorities and held 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."

9. In this case, as discussed earlier, marriage itself is not possible either under the Hindu Law or Christian Law. The authority concerned ought to have verified the same before recording such marriage. But the fact remains whether such marriage is valid marriage or not is the question. Even if the petitioner was present, the authority should have verified before recording the marriage. Here, the registration of marriage had not been taken place. In that view of the matter, registration of marriage alone is set aside. The writ petition is disposed of accordingly. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

WEB COPY

To

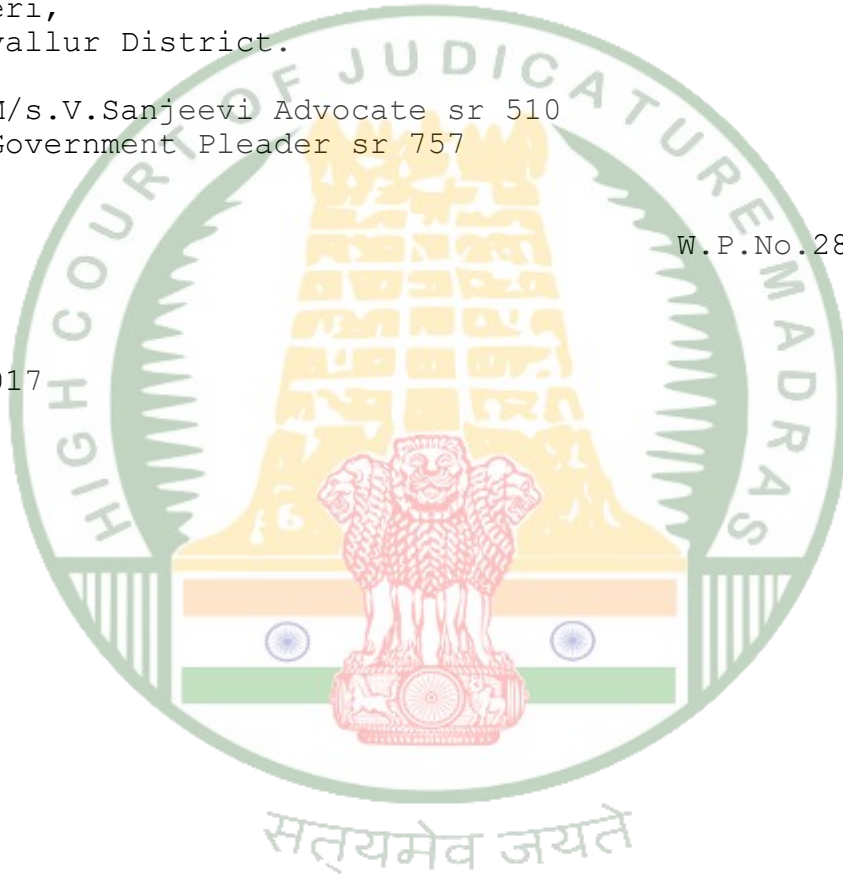
- 1 The Inspector General of Registration,
100 Santhome High Road
Mylapore, Chennai-600 003
- 2 The District Registrar(Chennai North),
No.27, Rajaji Salai
Chennai-600 001.
- 3 The Marriage Officer and Sub-Registrar,
Sub-Registrar Office,
Ponneri,
Tiruvallur District.

+1 cc to M/s.V.Sanjeevi Advocate sr 510

+1 cc to Government Pleader sr 757

W.P.No.28569 of 2016

ad(co)
aa14/02/2017



WEB COPY