

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

W.P.No.34399 of 2016

M.Rajalakshmi

.. Petitioner

Vs.

1.The Inspector General of Registration,
Mylapore, Chennai -600 004.

2.The Registrar,
Office of the Registrar of Marriage,
Chennai North (Joint-1)
Chennai.

3.N.S.Harishankar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his letter No.38343/G2/2016 dated 26.08.2016 along with the records of the 2nd respondent pertaining to "Certificate of Marriage" registered under Sl.No.1166 of 2014 dated 27.03.2014 and to quash the same as illegal and direct the 2nd respondent to delete, cancel and remove the same from the records of the 2nd respondent office.

For Petitioner : Mrs.A.Arulmozhi

For Respondents: Mr.A.N.Thambidurai
Special Govt. Pleader [R1 & R2]
Mr.D.Saravanakumar [R3]

ORDER

Heard the learned counsel for the petitioner and the third respondent and the learned Special Government Pleader appearing on behalf of the respondents 1 and 2 and with the consent parties, the writ petition is taken up for final disposal.

2. The case of the petitioner is that the third respondent was in love with the petitioner since from his school days and he compelled the petitioner to marry him. Though initially the petitioner did not show any interest and refused his proposal , later she believed his words and went along with the third respondent to the registrar office on his

compulsion. The petitioner was made to believe that prior to the marriage, a notice should be given to the Registrar to register the marriage and accordingly she was made to sign the printed forms. Later the respondent used to disturb the petitioner over phone and had informed her that their marriage was registered in the office of the Registrar of Marriages vide Certificate No.1166/2014 on 27.03.2014. On verification of the documents, the petitioner came to know that the alleged marriage certificate was issued by one Advocate, whom she had never met.

3. Thereafter, the petitioner had filed a petition in O.P.2936 of 2014 before the learned Principal Family Judge, Chennai, under Sec.12(1)(c) of Hindu Marriage Act 1955, praying to declare the marriage as null and void. The third respondent on receipt of notice from the petitioner, filed a petition in O.P.No.4877 of 2014 before the said Court for Restitution of Conjugal Rights. Thereafter there is a likelihood of settlement between the parties. Mediation proceedings went on and a joint memo of compromise was filed by the parties accepting to declare the said marriage as null and void.

4. The trial Court vide its order dated 05.08.2016 has dismissed the petition in OP.No.2936 of 2014 as not maintainable, since the petitioner in the said petition is not entitled for a declaratory relief under Sec.12(1)(c) of Hindu Marriage Act, which does not speak anything about the registration done by committing fraud or coercion. The petition in OP.No.4877 of 2014 filed by the third respondent was also dismissed as withdrawn by the trial Court.

5. In the said circumstances, the petitioner made a representation dated 11.08.2016 to the respondents 1 and 2 to cancel the said marriage registration. But the respondent in his reply dated 26.08.2016 has stated that they have no authority to cancel the marriage registration and the remedy can only sought before the appropriate Court. Therefore, the petitioner is before this Court in this Writ Petition.

6. The only point that has been raised by the learned counsel for the petitioner is that no marriage was solemnised between the petitioner and the third respondent and the advocate was instrumental in registering the marriage before the Registration Authority. The learned counsel for the petitioner placed reliance on the order passed by the Division Bench of this Court which categorically states that the marriage performed by the advocate in his office premises are per se illegal and unfair in the eye of law.

7. The learned counsel appearing for the third respondent would only contend that the marriage was not performed in the premises or the office of the advocate. It is stated that the petitioner had lived with the third respondent and thereafter left him. Therefore, the third respondent has filed a petition for restitution of conjugal rights.

8. This Court heard the rival submissions made by the learned counsel on either side.

9. Taking into consideration the decision of the Division Bench of this Court and that an advocate is not a prohit or anybody else to conduct a marriage, the validity of marriage was struck down by relying on the authority in S.Jeyanthi Vs. The Inspector General of Registration, Mylapore, Chennai and Others in [CDJ 2016 MHC 123]. It is relevant to extract the following paragaphs :

41. To sum up:

(a) Marriages performed in secrecy in the chambers of Advocates and Bar Association Rooms, will not amount to solemnisation 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 of 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. In view of the above observation made by the Division Bench of this Court, the marriage said to have been solemnised between the petitioner and third respondent which was registered on the side of the second respondent on 27.03.2014 is declared as null and void. Accordingly, the Writ Petition stands allowed by quashing the registration made by the second respondent vide Registration No. 1166/2014 dated 27.03.2014 and consequently, the second respondent is directed to delete and remove the same from the marriage records as expeditiously as possible. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ds

To:

1.The Inspector General of Registration,
Mylapore, Chennai -600 004.

2.The Registrar,
Office of the Registrar of Marriage,
Chennai North (Joint-1)
Chennai.

+2ccs to M/s.A.Arulmozhi,Counsel for petitioner sr.18795

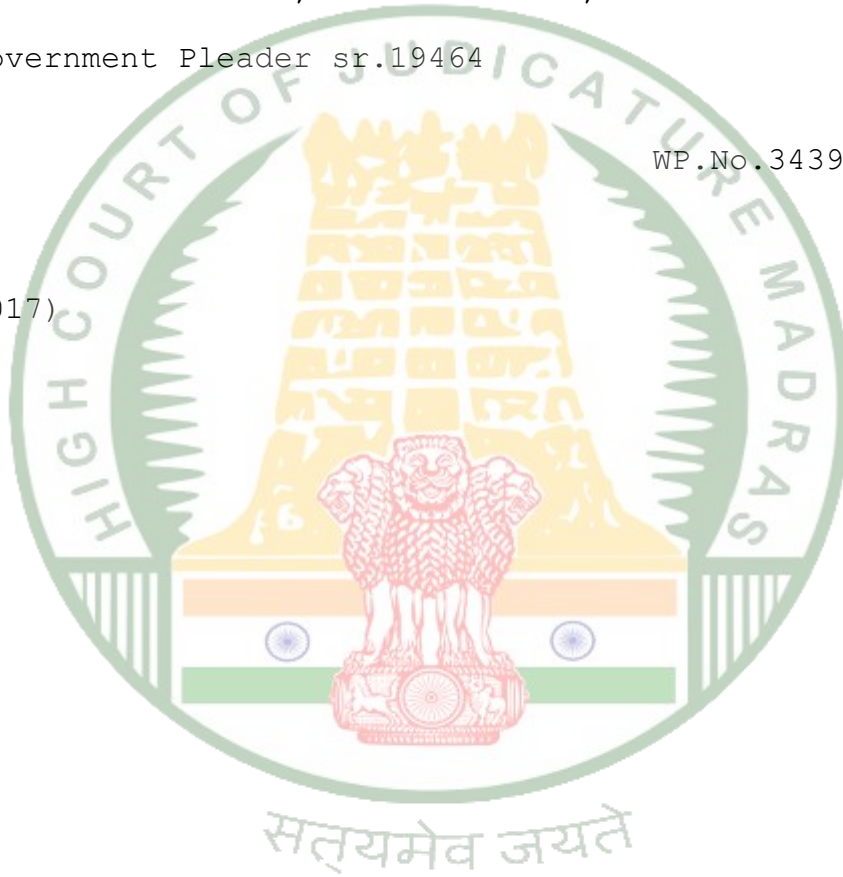
+1cc to M/s.Saravanakumar,Counsel for R3,sr.19339

+1cc to Government Pleader sr.19464

WP.No.34399 of 2016

sj(co)

ss(17/4/2017)



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