

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.10.2017

Delivered on: 11.10.2017

Coram

The Hon'ble Mr. Justice **A.SELVAM**

and

The Hon'ble Mr. Justice **P.KALAIYARASAN**

C.M.A.No.862 of 2017

Divya

.. Appellant

Vs

Elangovan

.. Respondent

Civil Miscellaneous Appeal preferred against the order dated 10.11.2016, passed in F.C.No.327 of 2015, on the file of the Family Court, Chengalpattu.

For Appellant

..

Mr.A.Punithavanan

For Respondent

..

Mr.P.Anandan

M/s.Majestic Law Firm

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

This Civil Miscellaneous Appeal is directed against the order dated 10.11.2016, passed in F.C.O.P.No.327 of 2015, by the Family Court, Chengalpattu.

2.The appellant herein, as petitioner, has filed F.C.O.P.No.327 of 2015, on the file of the trial Court, under Section 11 of the Hindu Marriage Act, 1955, praying to declare that the marriage registered on 09.04.2014, in the office of the Marriage Registrar, District Registrar Office, Chennai North, Joint-I, based on a certificate issued by an advocate is null and void.

3.The material averments made in the petition are that the petitioner has known the respondent for a period of five years and both of them belong to same village. On 09.04.2014, the respondent has taken the petitioner to an advocate office, which situates at No.41/83, Armenian Street, Chennai and obtained her signatures on two blank forms. During first week of 2015, the petitioner has come to know through respondent that the respondent has married her on 09.04.2014, before Marriage Registrar, District Registrar Office, Chennai North, Joint-I. The petitioner has informed the said factum of marriage to her parents and applied for certified copies of the documents. After obtaining the same, the petitioner has come to know that on 09.04.2014, advocate Mr.M.Suresh has performed the marriage between her and respondent in his office under Section 7-A

of the Hindu Marriage Act, 1955. No such marriage has been performed. The petitioner is the real victim. The respondent has cleverly played foul play. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4.The material averments made in the counter filed on the side of the respondent are that in mediation proceedings, the petitioner has expressed her willingness to live with the respondent and there is no merit in the petition and the same deserves to be dismissed.

5.The material averments made in the additional counter filed on the side of the respondent are that the marriage between the petitioner and respondent has been ratified by the petitioner. Therefore, the entire burden lies upon her to prove that no such marriage has taken place. There is no merit in the petition and the same deserves to be dismissed.

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6.On the basis of rival contentions put forth on either side and also on the basis of the arguments advanced by both sides, the trial Court has dismissed the petition by way of passing the impugned

order and the same is being challenged in the present Civil Miscellaneous Appeal.

7.The learned counsel appearing for the appellant/petitioner has repeatedly contended that on 09.04.2014, the petitioner has been taken to an advocate office, which situates at No.41/83, Armenian Street, Chennai and the respondent has obtained the signatures of the petitioner on two blank forms and by utilizing the same, the alleged marriage between the petitioner and respondent has been registered as if their marriage has been performed as per provisions of Section 7-A of the Hindu Marriage Act, 1955, but no such marriage has taken place. Under the said circumstances, the present petition has been filed praying to declare that the alleged marriage between the petitioner and respondent is null and void. Even though on the side of the respondent, the alleged marriage has not been proved in accordance with law, the trial Court has dismissed the petition without any basis and therefore, the order passed by the trial Court is liable to be set aside.

8.The learned counsel appearing for the respondent/respondent has contended to the effect that the marriage

between the petitioner/respondent has been performed in accordance with the provisions of Section 7-A of the Hindu Marriage Act, 1955 in the office of an advocate by name Mr.M.Suresh and after marriage both the respondent and petitioner have gone to Marriage Registrar's Office and registered their marriage and necessary Marriage Certificate has also been issued and further, the petitioner has been examined as P.W.1 and she has given evidence totally contra to the averments made in the petition and the trial Court, after considering the overall evidence available on record, has rightly dismissed the petition and therefore, the dismissal order passed by the trial Court does not require any interference.

9. Basing upon the divergent submissions made on either side, the following aspects have become emerged.

(1) The consistent case of the respondent is that on 09.04.2014, the marriage between the petitioner and respondent has been performed in accordance with the provisions of Section 7-A of the Hindu Marriage Act, 1955, in the advocate office mentioned supra.

(2)The consistent case of the petitioner is that no such marriage has taken place on 09.04.2014, in the office of advocate. On the same day, the respondent has taken the petitioner to the said office and obtained her signatures on two blank forms and by utilizing the same, a Marriage Certificate has been obtained from the Marriage Registrar's Office.

10.Since the alleged marriage between the petitioner and respondent has been candidly denied on the side of the petitioner, the entire burden lies upon the respondent to prove to the effect that such marriage has been performed in the office of advocate Mr.Suresh.

11.On the side of the petitioner, the Marriage Certificate has been marked as Ex.P1. The certificate alleged to have been given by advocate Mr.Suresh has been marked as Ex.P2.

12.The consistent case of the petitioner is that no such marriage has taken place on 09.04.2014, in the office of Advocate Mr.M.Suresh. But the consistent case of the respondent is that such marriage has been performed in the said office in accordance with the provisions of Section 7-A of the Hindu Marriage Act, 1955.

13. On the side of the petitioner, she has been examined as P.W.1. During the course of cross-examination, she has clearly admitted to the effect that she conceded the alleged fact that the marriage between her and respondent has been performed on 09.04.2014 in the District Registrar Office, Chennai North, Joint-I. Further, she admitted to the effect that on 09.04.2014, she has completed 18 years. Further she admits to the effect that her petition has to be dismissed. Further she candidly admitted to the effect that out of her own will, on 09.04.2014, she has gone to the Registrar Office along with the respondent. Further, she has stated to the effect that she accepts the marriage between her and respondent.

14. It is true that on the side of the respondent, no evidence is available and even the respondent has not been examined. However, the Court has to meticulously analyse the evidence given by the petitioner. As mentioned supra, the petitioner has accepted everything put forth on the side of the respondent. To put it in short the petitioner has given evidence contra to the averments made in the petition. Since the petitioner herself has candidly admitted to the effect that she has voluntarily gone to Registrar's Office along with the respondent and since she admitted the alleged marriage between her

and respondent, the Court can very well presume that their marriage has been performed in accordance with the provisions of Section 7-A of the Hindu Marriage Act, 1955. Since the Court can very well draw a strong presumption to the effect that the marriage between the petitioner and respondent has been performed in accordance with the provisions of the said Section, it is needless to say that Ex.P1 is a valid document and the same cannot be declared as null and void.

15.The trial Court, after considering the contention put forth on the side of the petitioner and also after evaluating the evidence given by the petitioner (P.W.1), has rightly dismissed the petition. In view of the discussion made earlier, this Court has not found any acceptable force in the contention urged on the side of the appellant/petitioner and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with costs. The order passed in F.C.O.P.No.327 of 2015, by the trial Court, is confirmed.

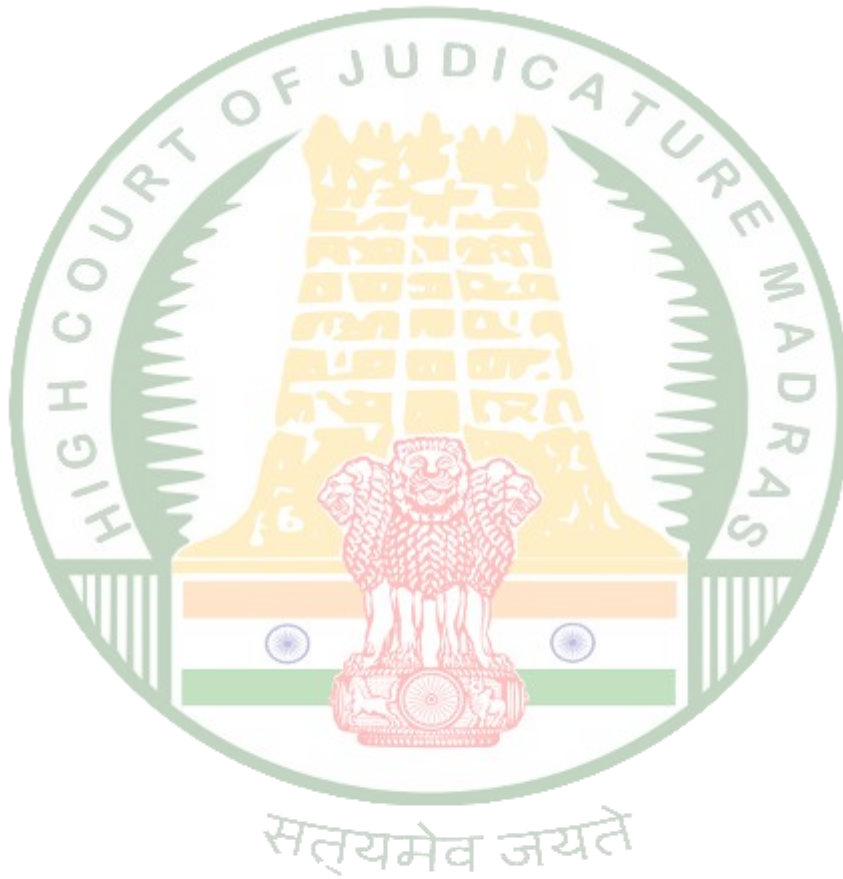
(A.S.J.,) (P.K.J.,)
11.10.2017

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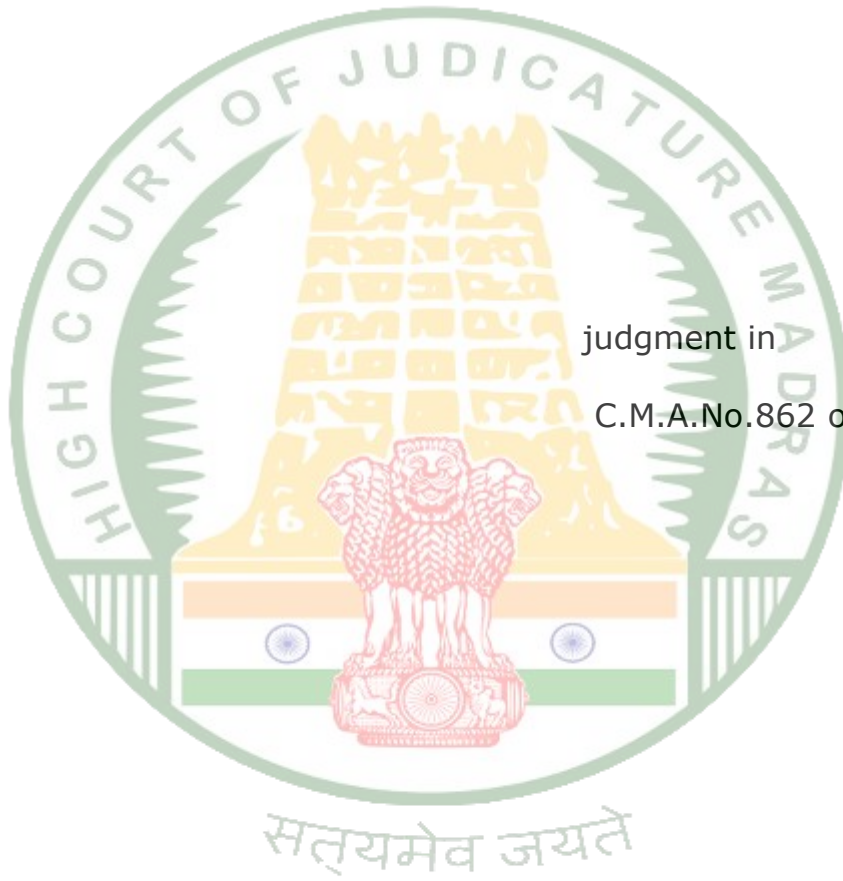
To

The III Additional Principal Family Court,
Chennai.



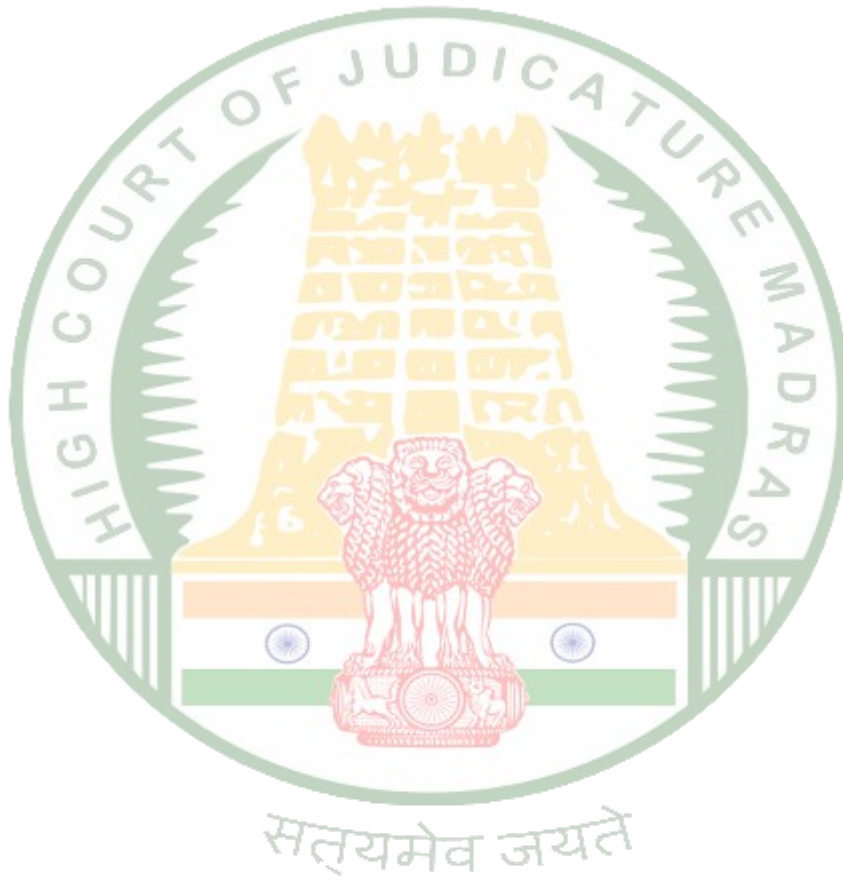
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