



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :14.09.2017
PRONOUNCED ON : 21.11.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.S.A(MD)Nos.19 and 20 of 2016
and
C.M.P.(MD).Nos.6882 and 6883 of 2016

A.Aswini ... Appellant/Respondent/Petitioner in both petitions

Vs.

T.Rajavarman ... Respondent/Appellant/Respondent in both petitions

PRAYER:- Civil Miscellaneous Appeals filed under Section 28 of H.M.O.P. read with 100 of C.P.C against the decree and judgment dated 20.06.2016 in C.M.A.Nos.44 and 45 of 2015 on the file of the Additional District Court/Fast Track Court at Kumbakonam reversing the decree and judgment dated 30.06.2015 in H.M.O.P.Nos.68 and 69 of 2013 on the file of the Principal Sub-Court at Kumbakonam.

For Appellant :Mr.AR.L.Sundaresan, Senior Counsel
for Mr.N.Ilango

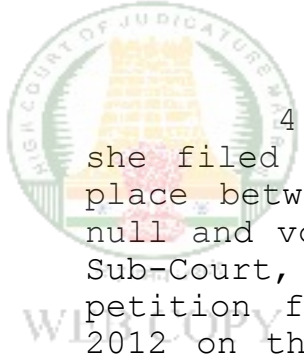
For Respondent :Mr.D.Senthil

COMMON JUDGMENT

The Civil Miscellaneous Appeals have been filed against the decree and judgments dated 20.06.2016 in C.M.A.Nos.44 and 45 of 2015 on the file of the Additional District Court/Fast Track Court at Kumbakonam reversing the decree and judgments dated 30.06.2015 in H.M.O.P.Nos.68 and 69 of 2013 on the file of the Principal Sub-Court at Kumbakonam.

2. Since the issues are inter-related to each other, both the appeals are taken up together and decided by this common judgment.

3. This appellant herein is the wife of the respondent herein. For the sake of convenience, the parties are referred to as per the rank mentioned in the civil miscellaneous second appeals.



4. The appellant herein would aver among other things that she filed a petition for declaring marriage alleged to have taken place between herself and the respondent herein on 12.04.2012 as null and void in H.M.O.P.No.50 of 2012 on the file of the Principal Sub-Court, Cuddalore. Similarly, the respondent herein had filed a petition for restitution of conjugal rights in H.M.O.P.No.111 of 2012 on the file of the Principal Sub-Court, Thanjavur. While so, the appellant preferred a Tr.C.M.P.No.324 of 2012 for transfer of the respondent's petition in H.M.O.P.No.111 of 2012 to be tried along with H.M.O.P.No.50 of 2012. By an order dated, 06.11.2012, this Court transferred both the petitions to the Principal Sub-Court, Kumbakonam and petition filed by this appellant for nullity was renumbered as H.M.O.P.No.68 of 2013 (H.M.O.P.No.50 of 2012) and the respondent's petition for restitution of conjugal rights was renumbered as H.M.O.P.No.69 of 2013 (H.M.O.P.No.111 of 2012).

5. The Court below tried both the petitions together and declared, that the marriage between the appellant and the respondent is null and void and dismissed the petition filed by the respondent for restitution of conjugal rights. Aggrieved by the same, the respondent preferred an appeal before the Additional District Judge, Thanjavur, in C.M.A.Nos.44 and 45 of 2015 which was later transferred to the Additional District Court (Fast Track Court) at Kumbakonam. On an appeal, the orders of the Court below were set aside by the appellate Court in favour of this respondent. Aggrieved over the order of the appellate Court, the appellant is before this Court praying for the relief stated supra.

6. Learned counsel appearing for the appellant through the written arguments would submit that the marriage in dispute was registered under the provisions of the Tamil Nadu Registration of Marriage Act, 2009. However, in case of Hindus, there should be a registration of a Hindu marriage under the provisions of the Tamil Nadu Registration of Marriage Act 2009, if at all there had been a marriage either under Section 7 or 7A of the Hindu Marriage Act prior to the said registration. In support of his contention, he drew the attention of this Court reported in 2014 (6) CTC 129, S.Balakrishna Pandian Vs. Superintendent of Police, Kancheepuram and Others. The said principle is also echoed in the judgment reported in 2016(1) L.W.747, Jayanthi Vs I.G. Of Registration, Chennai and others. When that being the factual position of the matter, the first appellate Court ought to have found that to constitute a valid registration of the marriage, there should be a proof of a valid Hindu Marriage, however, in the case on hand, it has not been done either under Section 7 or 7-A of the said Act. To sum up, he would submit that there is no solemnization of the Hindu Marriage between the parties prior to registration of the marriage and the registration under the provisions of the Tamil Nadu Registration of Marriage Act, 2009 is unlawful and illegal and hence, the marriage between the parties has to be declared as a nullity. Therefore, he prays for appropriate orders.



7. Per contra, the learned counsel appearing for the respondent through his written submission would submit that the appellate Court based on evidence, oral and documentary evidence came to the conclusion that the trial Court erred in scanning the evidence available before it and subsequently, set aside the orders of the trial Court and it is a well reasoned order, which need not be interfered by this Court. In support of his contention, he relied on the judgment reported in 1991(2) L.W.491, Rakkammal Vs. Meyappan Ambalam and seven others, 2000 (2) MLJ 111, Natarajan Vs Veeran 1998(1)L.W.358, Renugadevi Vs Manohara and AIR 2000 Madras 356, Annathai Vs Murugaiah.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

9. When the matters came up for hearing, both the appeals were admitted by this Court on 13.07.2016 on the following questions of law:-

C.M.SA(MD).No.19 of 2016:-

(a) Whether a mere registration of an alleged marriage would be sufficient to prove a valid Hindu marriage in the absence of proof of ingredients for valid marriage?

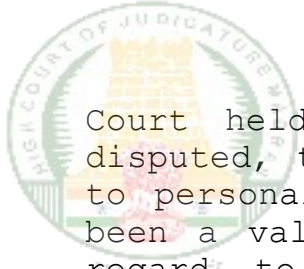
b) Whether the lower appellate Court erred in holding the alleged marriage between the appellant and the respondent was valid in the absence of the proof of ingredients under Section 7A of the Hindu Marriage Act, 1955?

C.M.S.A(MD).No.20 of 2016:-

(a) Whether the lower appellate Court erred in ordering restitution of conjugal rights in the absence of a finding that the withdrawal of the appellant from the alleged matrimonial relationship is without reasonable cause?

b) Whether the lower appellate Court erred in ordering restitution of conjugal rights and thereby compelling the appellant to live with the respondent with whom there has been no cohabitation from the beginning of the alleged marriage?

10. From the beginning, the respondent/husband would claim that the respondent that the marriage had taken place in accordance with Hindu Customs and Rites. If it is so, it is for him to establish the same as per law. In the absence of any evidence to show that the marriage took place in accordance with the Hindu Customary Rites, it cannot be stated that it is a valid marriage that has taken place between the petitioner and the respondent. Needless to mention that the marriage ought to have been solemnized in accordance with the provisions of the Hindu Marriage Act. However, in the case on hand, it has not been done so. To arrive such conclusion, I garner support of this Court reported in 1992 (2) MLJ 11, between R.Anitha Marginic Vs. R.Annadurai, wherein, this



Court held in para No.10 that when the factum of marriage is disputed, the evidence regarding performance of marriage, according to personal law must be brought on record to show that there had been a valid marriage. Here, admittedly, there is a dispute with regard to performance of the marriage conducted between the petitioner and the respondent. Further, in the said judgment, it is held that registration alone is not the sole proof of marriage in order to become a valid marriage. In the present case on hand, the respondent was examined as R.W.1 and he has clearly stated that he is not an atheist but a god believing person. Further, he has stated categorically in his cross-examination that there was a marriage between the parties with Hindu principles and by recitation of holy hymns. In the cross-examination of the husband would clearly prove that there is no proof of any such marriage preceding the alleged registration of marriage. One thing is certain that there was no solemnization of marriage before the registration of marriage. In the facts and circumstances of the case, the judgment reported in R.Anitha's case, is directly applicable to the case on hand. This Court perused the judgments relied on by the petitioner and this Court is of the considered view that the judgment relied upon by the respondent/husband will not be applicable to the facts and circumstances of the case.

11. Apart from the above, there is no co-habitation between the petitioner and the respondent. In the evidence, the petitioner has clearly stated that she was taken by the respondent forcibly and her marriage was registered accordingly.

12. The other contention that the she was smiling in the photograph along with the respondent by exchanging garlands with each other and therefore, it is argued that the marriage was taken place with the consent of the petitioner alone and therefore, it said point has been taken into account by this Court, cannot be countenanced in the eye of law on the reason that smiling in the photo will not be a sufficient ground to prove that it is a valid marriage, unless and until it satisfies the requirement of the marriage to be registered under the Hindu Marriage Act.

13. When that being the factual position, the first appellate Court approached the issue against the letter and spirit of the provisions of the Act and reversed the judgment of the trial Court ignoring the fact that it ought to have found that to constitute a valid registration of the marriage there should be a proof of valid Hindu Marriage in the case on hand either under Section 7 or the Hindu Marriage Act or under Section 7-A of the said Act. In view of the fact there is no solemnization of Hindu marriage between the parties prior to registration of the marriage, the registration under the provisions of the Tamil Nadu Registration of Marriage Act 2009 is unlawful and illegal and hence, the same has to be declared as a nullity. Due to the afore-said reason only, the Law Commission has recommended to the Government that registration of marriages should be made compulsory under law to prevent marriage



fraud, bigamy, child marriages and desertion of women by their husband.

14. In the light of the foregoing discussions and observations, this Court comes to the conclusion that there is no valid marriage between the appellant and the respondent, it need not answer for the all substantial questions of law raised in the Civil Miscellaneous Appeals. In fine, both the Civil Miscellaneous Appeals stand allowed. Consequently, this Court sets aside the orders of the appellate Court dated 20.06.2016 made in C.M.A.Nos.44 and 45 of 2015 on the file of the Additional District Court (FTC), Kumbakonam. The connected miscellaneous petitions stand closed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar.

To,

(1)The Additional District Judge/Fast Track Court
Kumbakonam.

(2)The Principal Subordinate Judge,
Kumbakonam.

Copy to:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.G.Innisai, Advocate, SR.No. 88401

+1CC to Mr.D.Senthil, Advocate, SR.No. 88427

order made in
C.M.S.A (MD)Nos.19 of 2016 and 20 of 2016
21.11.2017

ssm

AM/SKN RSK/SAR 3/23.11.2017/5P/6C