



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2017

CORAM :

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

C.R.P. (PD) No. 677 of 2016

WEB COPY

M.Mumtaj Fathima

... Petitioner/Plaintiff

Vs.

D.Vimal Raj

... Respondent/Defendant

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India to set aside the order dated 29.01.2016 passed in the unnumbered plaint on the file of Family Court, Tirunelveli.

For Petitioner : Mr.D.Nallathambi

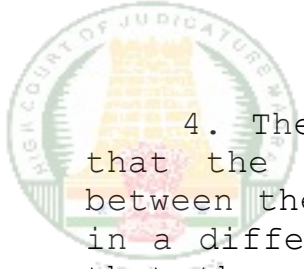
For Respondent : Mr.C.Karhtik

O R D E R

This Civil Revision Petition is filed to set aside the order dated 29.01.2016 passed in the unnumbered plaint on the file of Family Court, Tirunelveli.

2. The petitioner has filed a suit on the file of the Family Court, Tirunelveli for declaration that the petitioner is not a legally wedded wife of the respondent as no marriage as per law had taken place between them. According to the petitioner, the petitioner and the respondent loved each other and went to Kerala without the knowledge of the family members for three months. The father of the petitioner gave a complaint to the police against the respondent and his family members and also filed H.C.P.No.1167 of 2011 before this Court. The respondent informed the petitioner that if the documents are created to show that they got married the police will not torture his family members. Therefore, invitation was prepared as though the petitioner and the respondent are getting married on 12.03.2012 and the alleged marriage was registered on 22.03.2012 in the Sub Registrar Office, Thirunavalur, Villupuram District. The petitioner never went to the place where the alleged marriage took place. The petitioner is a Muslim and the respondent is a Hindu and no valid marriage took place as per the Provisions of the Special Marriage Act.

3. The said plaint was rejected by order dated 29.01.2016 on the ground that the petitioner admitted before the Division Bench of this Court in H.C.P.No.1167 of 2011 that she got married to the respondent and she wanted to live with the respondent only and not willing to go with her parents. In view of the said statement before this Court, the suit is not maintainable. Aggrieved by the said order, the revision petitioner has filed the present Civil Revision petition before this Court.



4. The learned counsel for the revision petitioner submitted that the court below failed to see that the alleged marriage between the petitioner and the respondent came into existence only in a different circumstances and the court below erred in holding that the petitioner is not entitled to relief sought for in view of the order dated 03.04.2012 passed in H.C.P.No.1167 of 2011 by this Court. The court below erred in not considering the explanation given by the petitioner dated 25.01.2016 for return of the plaint dated 22.01.2016 in proper manner. The learned Judge failed to see the Provisions of the Special Marriage Act were not followed for the valid marriage.

5. The learned counsel for the petitioner submitted that the learned Judge erred in rejecting the plaint without numbering the same and relied on the judgment reported in 2002-3-L.W.476 in Hindustan Petroleum Corporation Limited, rep. By its Sr.Regional Manager-Retail, Coimbatore Retail Regiona, Coimbatore Vs. C.M.Hariraj and 2 others, wherein it has been held as follows:

"When the first defendant had purchased the property from defendants 2 and 3, he stepped into the shoes of defendants 2 and 3 and therefore, the only question whether the first defendant is bound by the earlier agreement of lease is a matter that can be thrashed out only after hearing the parties and not in the summary way. Further more, Order 7 Rule 11 of Civil Procedure Code provides only limited ground for rejection of the plaint and I am of the view that the court below has come to the conclusion as if there is no cause of action for the plaintiff to file the suit and ultimately rejected the same as well as rejected the petition. The question whether there is any cause of action or not can be ultimately decided only after issue of notice to the other side and the Court cannot act as a spokesman of the defendants. Similarly, the contentions raised by the defendants may be well founded; but that is not the stage to be considered. Hence, I am of the view that rejection of the plaint as well as the petition by the court below without notice to the opposite party is not sustainable under law. When there is an error apparent on the fact of the record and as it was opposed to natural justice, I am of the view that interference under Article 226 of the Constitution of India becomes absolutely necessary"

6. The learned counsel for the respondent submitted that the petitioner and the respondent got married as per law and they lived together as husband and wife and a female child was born in the wedlock. Due to misunderstanding between the petitioner and the respondent, the petitioner has presented the present plaint for the above relief. It is not correct to state that no marriage took place between the petitioner and the respondent. On the other

hand, they got married as per law and lived as husband and wife and a female child was born in the wedlock.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

8. The case of the petitioner is that no marriage took place between the petitioner and the respondent and document has been created as though the petitioner and the respondent got married in order to prevent the parents of the respondent being tortured by the police based on the complaint given by the father of the petitioner and H.C.P filed by him. The learned Judge, considering the statement given by the petitioner before the Division Bench of this Court in H.C.P.No.1167 of 2011 and statement of the petitioner's father, the respondent and the respondent's mother, held that the relief sought for by the petitioner is not maintainable. From the reading of the materials on record especially the order passed by this Court on 03.04.2012 in H.C.No.1167 of 2011, there is no irregularity or illegality in the order passed by the learned Judge, Family Court, Tirunelveli, warranting interference by this Court.

9. In the circumstances, the judgment relied on by the learned counsel for the petitioner is also not applicable to the facts of the present case.

10. In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1.The Family Court, Tirunelveli.

2.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

+1cc to Mr.D.Nallathambi, SR.No:160

+1cc to Mr.C.Karthik, SR.No:129

AE/MR VB/01.02.2017/3p/5c

C.R.P. (PD) No.677 of 2016
02.01.2017