

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.12.2017

Delivered on: 24.01.2018

Coram

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

C.M.A.Nos.1441 and 1581 of 2016
and
C.M.P.Nos.11054 and 20873 of 2017

B.Balamurali ... Appellant in both
the C.M.As.

Vs

M.Deepa Quinn .. Respondent in
both the C.M.As.

Civil Miscellaneous Appeals preferred Under Section 19 of
the Family Courts Act, against the common order dated 16.3.2016
passed in H.M.O.P.Nos.2988 and 3831 of 2007, by the Principal
Family Court, Chennai

For Appellant .. Mr.M.P.Saravanan
in both C.M.As.

For Respondent .. Mr.K.Sukumaran
in both C.M.As.

COMMON JUDGMENT

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

These Civil Miscellaneous Appeals are directed against
the common order dated 16.3.2016 passed in H.M.O.P.Nos.2988 of
2007 and 3831 of 2007, by the Principal Family Court, Chennai.

2.The respondent herein, as petitioner, has filed
H.M.O.P.No.2988 of 2007 under Section 12(1)(c) of the Hindu
Marriage Act, 1955, to declare that the marriage held between
her and respondent therein, on 30.11.2006, is not valid in law.

Likewise, the appellant in both the Civil Miscellaneous Appeals, as petitioner, has filed H.M.O.P.No.3831 of 2007, under Section 9 of the Hindu Marriage Act, 1955, praying to pass a decree of restitution of conjugal rights.

3.The material averments made in the petition filed in H.M.O.P.No.2988 of 2007 may be stated like thus:-

The respondent has always followed the petitioner while she has gone to school. The respondent has expressed his love towards the petitioner and the same has been rejected. On 30.11.2006, at about 9.30 a.m., the petitioner has gone out so as to attend an interview for airhostess. The respondent has intercepted her and asked her to get into a car by way of saying that he would take her to the place of interview. The respondent has taken the petitioner to Registrar Office, Kodambakkam and compelled her to put her signature. Due to his compulsion, the petitioner has put her signature. After such occurrence, the respondent has taken her to his house and made others to believe that he married the petitioner and subsequently, a police complaint has been given, wherein, the respondent has stated that he married the petitioner. No marriage has been performed between the petitioner and respondent and under such circumstances, the present petition has been filed for getting the relief sought therein.

4.The material averments made in the petition are totally denied on the side of the respondent by way of filing counter.

5.The material averments made in the petition filed in H.M.O.P.No.3831 of 2007 are that on 30.11.2006, the marriage between the petitioner and respondent has been performed in Shri Sivasakthi Temple, No.13/1 Palani Andavar Koil Street, Vadapalani, Chennai-26 and subsequently the marriage has been registered. After marriage, both of them have lived as husband and wife in the house of the petitioner. After sometime, without consent of the petitioner, the respondent has left matrimonial abode. Since the respondent has left matrimonial abode, without any sufficient reason, the present petition has been filed for getting the relief sought therein.

6.On the side of the respondent, a detailed counter has been filed, wherein, the material averments made in the petition are specifically denied.

7.On the basis of the rival evidence on record, the trial Court has allowed the petition filed in H.M.O.P.No.2988 of 2007 and dismissed the petition filed in H.M.O.P.No.3831 of 2007 by way of passing a common order and the same is being challenged in the present Civil Miscellaneous Appeals.

8.The learned counsel appearing for the appellant (husband) in both the Civil Miscellaneous Appeals, has repeatedly contended to the effect that prior to marriage, both the appellant and respondent have loved each other and both of them have decided to marry and accordingly on 30.11.2006, in Shri Sivasakthi Temple, No.13/1 Palani Andavar Koil Street, Vadapalani, marriage between the appellant and respondent has been performed and subsequently their marriage has been registered in accordance with law and after marriage, both of them have lived as husband and wife in the house of the appellant and after sometime, the respondent has left matrimonial abode without sufficient reason. Under such circumstances, H.M.O.P.No.3831 of 2007 has been filed on the file of the trial Court and the respondent, as petitioner, has filed H.M.O.P.No.2988 of 2007, but the trial Court, without considering the evidence adduced on the side of the appellant, has erroneously dismissed H.M.O.P.No.3831 of 2007 and allowed H.M.O.P.No.2988 of 2007 by way of passing a common order and the same is liable to be set aside and the petition filed in H.M.O.P.No.3831 of 2007 is liable to be allowed and the petition filed in H.M.O.P.No.2988 of 2007 is liable to be dismissed.

9.Per contra, the learned counsel appearing for the respondent/wife has also repeatedly contended to the effect that no marriage has been performed on 30.11.2006 and further the temple mentioned in the petition filed in H.M.O.P.No.3831 of 2007 is not at all in existence and the appellant has created a false registration certificate and the trial Court, after considering the overall evidence available on record, has rightly allowed H.M.O.P.No.2988 of 2007 and rightly dismissed H.M.O.P.No.3831 of 2007 and therefore, the common order passed by the trial Court does not require any interference.

10.On the basis of rival submissions made on either side, for granting either relief, the Court has to meticulously analyse, as to whether a marriage has been performed between the appellant and respondent on 30.11.2006, in accordance with the Hindu Rites and Custom. Unless the said aspect is proved on either side, the relief sought in both the petitions cannot be granted.

11.On the side of the appellant/husband, C.M.P.No.20873 of 2017 has been filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908. Along with the same, certain documents have been filed. Considering the nature of issue that exists between the appellant and respondent, C.M.P.No.20873 of 2017 is liable to be allowed and the same is allowed and the documents annexed therein are marked as Exs.R4 to R9.

12.As pointed out earlier, for granting either relief sought in both the petitions, there must be a legally valid marriage between the appellant and respondent.

13.It is an admitted fact that the respondent, as petitioner, has filed H.M.O.P.No.2988 of 2007 under Section 12 (1)(c) of the Hindu Marriage Act, 1955. Section 12 of the said Act deals with voidable marriages. It is needless to say, to consider a marriage is voidable, there must be a marriage.

14.Likewise, H.M.O.P.No.3831 of 2007 has been filed under Section 9 of the Hindu Marriage Act, 1955. For the purpose of granting the relief sought therein also there must be a valid marriage.

15.In the instant case, the specific contention put forth on the side of the respondent/petitioner in H.M.O.P.No.2988 of 2007, is that no marriage has been performed, as pleaded on the side of the appellant. Since, the specific contention put forth on the side of the petitioner in H.M.O.P.No.2988 of 2007 is to the effect that there is no marriage between the appellant and respondent, question of invoking Section 12 of the Hindu Marriage Act, 1955 does not arise.

16.Now the Court has to meticulously analyse as to whether a valid marriage has been performed between the appellant and respondent on 30.11.2006, as pleaded in H.M.O.P.No.3831 of 2007.

17.The specific case of the petitioner therein is that on 30.11.2006, the marriage between the appellant and respondent has been performed in Shri Sivasakthi Temple, No.13/1, Palani Andavar Koil Street, Vadapalani, Chennai-26. Even though such a plea has been taken on the side of the petitioner, in H.M.O.P.No.3831 of 2007, no reliable/trustworthy documents are forthcoming so as to prove the above vital aspect.

18.It is true that by way of additional evidence, certain photographs and CD have been filed and these documents are not at all sufficient for the purpose of coming to a conclusion that on 30.11.2006, a valid marriage has been performed between the appellant and respondent, as pleaded in H.M.O.P.No.3831 of 2007.

19.It has already been pointed out that for the purpose of granting either relief, there must be a valid marriage.

20.The consistent case put forth on the side of the petitioner in H.M.O.P.No.2988 of 2007 is that there is no marriage at all and if that be the case of the petitioner

therein, H.M.O.P.No.2988 of 2007 is not at all legally maintainable under Section 12 of the Hindu Marriage Act, 1955. Likewise, on the side of the petitioner, in H.M.O.P.No.3831 of 2007, no valid/reliable documents have been filed for the purpose of proving the alleged marriage dated 30.11.2006. Since the said vital aspect has not at all been proved on either side, it is clear that both the petitioners are not legally entitled to maintain these petitions.

21.The trial Court, without considering the lack of evidence with regard to marriage, dated 30.11.2006, alleged to have been performed between the appellant and respondent, has erroneously allowed H.M.O.P.No.2988 of 2007.

22.In view of the discussion made earlier, this Court is of the considered view that the arguments advanced by the learned counsel appearing for both sides are totally devoid of merits.

23.The learned counsel appearing for the appellant has relied upon the decision passed by this Court in C.M.A.Nos.902, 903 and 2407 of 2010 (J.Anitha vs. J.Prakash, dated 27.02.2012), wherein, at paragraph No.88, this Court has observed as follows:

"88.We are constrained to observe that only because of the perverse and unsustainable order passed by the Court below, the life of two youngsters have been ruined for the past nine years. Had the Family Court considered the entire evidence, in the light of the well settled legal principles as stated above, the Court below would not have dissolved the marriage between the appellant and the respondent and in that event, there would have been a possibility for their reunion. But even now, it is not too late for the appellant and the respondent to calmly think about it, reunite and lead a peaceful life since there are no irreconcilable differences between the appellant and the respondent. Therefore, we hope and believe that the appellant and the respondent and more particularly the parents of the appellant will take sincere steps for their reunion."

24.It has already been pointed out that no legal marriage has been performed between the appellant and respondent on 30.11.2006. Under such circumstances, the observation made by this Court in the decision reported supra, is not applicable.

25.Since there is no valid marriage between the appellant and respondent, both the petitions are not legally maintainable by invoking the relevant provisions of Hindu

Marriage Act, 1955 and therefore, both the petitions are liable to be dismissed.

26.It has already been pointed out that the trial Court has dismissed H.M.O.P.No.3831 of 2007. Under the said circumstances, the dismissal order passed by the trial Court in H.M.O.P.No.3831 of 2007 is liable to be confirmed, whereas, the order passed in H.M.O.P.No.2988 of 2007 by the trial Court is liable to be set aside and the petition filed in H.M.O.P.No.2988 of 2007 is liable to be dismissed.

In fine, C.M.A.No.1441 of 2016 is allowed and the order passed in H.M.O.P.No.2988 of 2007 by the trial Court is set aside and consequently H.M.O.P.No.2988 of 2007 is dismissed without costs. C.M.A.No.1581 of 2016 is dismissed without costs. Connected miscellaneous petition is closed.

Exhibits marked on the side of the appellant/respondent:

- Ex.R.4 : Marriage certificate issued by temple.
- Ex.R.5 : Family card of the Respondent.
- Ex.R.6 : H.Sc.Mark Sheet of the respondent.
- Ex.R.7 : Order of acquittal in C.C.No.1230 of 2008
- Ex.R8 : Photos in Car, Registrar office & appellant's home
- Ex.R9 : Mobile Video-CD in car, Registrar office and appellant's home

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To
The Principal Family Court,
Chennai.

+ 2 cc to Mr.M.P.Saravanan Advocate,SR.5275,5276

C.M.A.Nos.1441 and 1581
of 2016

rr(co)
nr 21/03/2018