

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.1495 of 2016

P.Anthony Muthu

... Appellant/Respondent

Vs

M.Saraswathi

... Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal filed to set aside the Judgment and decree passed in I.D.O.P.No.120 of 2006 dated 22.12.2015 on the file of I Additional District Judge, Salem.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.T.S.Baskaran

J U D G M E N T

The appeal has been preferred against allowing of divorce petition filed by the respondent, granting decree of nullity of the marriage between the appellant and the respondent, which was registered on 03.07.2006, vide marriage certificate No.20/2006 in the office of Sub-Registrar, Ayothiyapttinam, Salem District.

2.The facts of the case are as follows:-

The appellant and the respondent were employed in different institutions, which were located opposite to each other. They became friends and because of the friendship, the appellant took advantage and on false representation, took the respondent to Registrar's office and obtained signature in the application for registration of marriage. Since based on misrepresentation, the signatures were obtained, the respondent filed a petition under Section 25(iii) of Special Marriage Act, 1954 as the respondent belongs to Hindu religion and the appellant is a Christian. After the alleged marriage, they never lived together. A police complaint was also given by the appellant. However, the respondent, before the police stated that her consent was obtained in a fraudulent manner. Thereafter only, the petition in I.D.O.P.No.120 of 2006 has been filed. The

respondent contended before the trial Court that the appellant is her friend and to see his relative, the appellant took the respondent to Registrar's office at Ayothiyapattanam, Salem District and there, without consent, her signatures were forcibly obtained. However, the appellant contended that the appellant and the respondent fell in love with each other and she came to the Registrar's office on her own and signed the registers and other documents voluntarily and no misrepresentation or false representation have been made to obtain signatures from the respondent.

3.The respondent was examined as PW1, Village Administrative Officer, Attur Town was examined as PW2, Village Administrative Officer, Ammapet Rural was examined as PW3, one Jayakumar @ Switch box Jayakumar was examined as PW4 and one Revathi, formerly Head Quarters Deputy Tahsildar, Salem was examined as PW5. Though the appellant filed counter statement, the appellant did not get into the box. However, during the cross examination, Exs.R1 to R4 were marked. The respondent entered into the box and gave evidence that her signature had been obtained in a fraudulent manner and she further stated that though she signed the papers, she did not know for what purpose she had signed the documents and without even reading the papers, she signed the papers. PW2, Village Administrative Officer, Attur as well as PW3, Village Administrative Officer, Ammapet would depose before the trial Court that the addresses given in the application for registration of marriage are false.

4.The trial Court also took note of the fact that after returning from the Sub-Registrar's office, the respondent did not go with the appellant and they never lived together and they have been keeping away for so many years and she did not evince any interest. The trial Court also took note of the non-examination of the appellant. Especially, in the divorce petition, even in the absence of any other evidence, if the appellant did not appear before the Court, the respondent is entitled to get exparte decree. Whereas in this case, the respondent herself and four other witnesses were examined on the side of the respondent and Exs.P.1 to Ex.P.6 were marked. The report of Village Administrative Officer, Attur, Ex.P.3 and the report of Village Administrative Officer, Ammapet Rural, Ex.P4 would undoubtedly prove that the addresses of the appellant and respondent given for registration of marriage are also false. Based on false addresses, the marriage was registered. The said fact was also taken into consideration by the trial Court. Further, PW4, Councillor, Salem Corporation deposed that the respondent and her parents were residing at Door No.121/74, Sathiya Nagar, Ammapet North during the year 2004 to 2007. PW5,

Head Quarters Deputy Tahsildar, Salem deposed that the respondent was residing at Door No.121/74, Sathiya Nagar and placed copy of voter list and the same was marked as Ex.P.6. The aforesaid evidence would undoubtedly prove that the place of residence of respondent is different from the address given in the application for registration of marriage.

5.Taking into consideration of all the evidences, the trial Court in paragraph 20 of the judgment found that the respondent under threat and coercion was forcibly taken to Ayothiyapattanam on 03.07.2006 and she had subscribed her signature without having any knowledge. It is also found that the appellant and the respondent never lived together as husband and wife and even after the alleged marriage, the respondent was living only with her parents and there was no marital relationship between the appellant and the respondent at any point of time. The respondent as PW1 categorically stated that she never lived in the address given in the application for registration of marriage and therefore, the trial Court found that the appellant intentionally gave wrong address.

6.The trial Court, taking into consideration of evidence of PW1 that her signature was obtained without her knowledge and she was made to sign the application for registration of marriage, found that there was no free consent as prescribed under Section 13 of Indian Contract Act. Therefore, in view of the unimpeachable evidence of PW1, in the absence of any rebuttal evidence on the side of the appellant and also taking note of absence of marital relationship between the appellant and the respondent, the trial Court found that the marriage which is said to have been registered on 03.07.2006 is a nullity.

7.The trial Court also took note of non-compliance of Section (5) of the Special Marriage Act (i.e.,) when a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage should have resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

8.PW1 to PW5 have categorically stated that both the parties never resided in the addresses given in the application for registration of marriage. In the absence of any rebuttal evidence that the appellant and respondent were living in the same address as shown in the application for registration of marriage, the trial Court rightly found Section (5) of the Special Marriage Act has not been complied with. Ultimately, the trial Court found that the respondent has not given her

consent, as from the evidence, it has been proved by the respondent that there was no consent on her part for such registration of marriage and the marriage was rightly declared as a nullity, as per Section 25(iii) of the Special Marriage Act.

9.As per the evidence available one more factor which is also taken note by the trial Court is the non inclination of the appellant to enter into the box. If a person wants to sustain the marriage and especially, when it is challenged before the Court, the appellant ought to have entered into the box and proved that the respondent deliberately filed a wrong proceeding. No such evidence has been adduced by the appellant for the reasons best known to him. Probably, he would have been under the impression that he may not succeed in the case.

10.Subsequent happenings should also be taken into consideration, especially in a marriage dispute. The decree of nullity of marriage was granted on 22.12.2015 and the respondent got married during January 2017 and gave birth to a child through the said marriage. The clock cannot be put back as many things have happened in the interregnum period. Therefore, this Court confirms the decree and judgment passed by the trial Court.

11.In the above said circumstances, the appeal fails and the same dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sai
To

The I Additional District Judge,
I Additional District Court,
Salem.

+2cc to Mr.T.S.Baskaran, Advocate Sr.23542
+1cc to Mr.R.Sankarasubbu, Advocate Sr.23878

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