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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :21.08.2018

PRONOUNCED ON:19.09.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.140 of 2015

and

M.P.No.1 of 2015

Mohanambal ... Appellant/Defendant

Vs.

Arularasan ... Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.35 of 2013 on the file of the Subordinate Judge, Arni, Thiruvannamalai District dated 23.09.2014 reversing the judgment and decree in O.S.No.183 of 2011 on the file of the District Munsif, Arni, Thiruvannamalai District dated 24.06.2013.

For Appellant : Mrs.V.Srimathi

For Respondent: Mr.Ashokapathy
for M/s.Pass Associates

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 23.09.2014 passed in A.S.No.35 of 2013 on the file of the Subordinate Court, Arni, reversing the judgment and decree dated 24.06.2013 passed in O.S.No.183 of 2011 on the file of the District Munsif Court, Thiruvannamalai.

2. The Second Appeal has been admitted on the following substantial question of law:

Whether the courts below were right in holding that the civil court has jurisdiction to grant a decree declaring that the marriage



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solemnized between the appellant and the respondent is null and void in view of the specific provision contained in the Hindu Marriage Act, creating a forum for resolving such a dispute?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Suffice to state that the plaintiff has laid the suit against the defendant for declaring the so called marriage between the plaintiff and the defendant wearing the garlands at Kannamangalam Police Station is null and void and restraining the defendant, her men, agents and servants by means of permanent injunction from threatening and blackmailing the defendant taking advantage of the so called void marriage in any manner, indulging in illegal activities.

5. Considering the reliefs sought for by the plaintiff, it is evident that the plaintiff has come forward with the suit to declare the legal character of his status as regards the alleged marriage with the defendant as provided under section 34 of the Specific Relief Act. Section 34 of the Specific Relief Act provides for declaration of status or right as provided therein. Sections 34 and 35 of the Specific Relief Act read as follows:

34. Discretion of Court as to declaration of status or right:- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation: A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

35. Effect of declaration: - A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the



parties are trustees, on the persons for whom, if in existence at the date of the declaration such parties would be trustees.

6. Per contra, according to the defendant in brief, denying the allegations that she has been indulging in immoral and wayward life and activities, according to the defendant, she and the plaintiff fell in love and in tune with the same, they had married on the Valentine's day i.e., on 14.02.2001 in the presence of the village elders and it is stated the abovesaid marriage took place at Pillaiyar temple of Kannamangalam Police station as per Hindu rites and customs and therefore denied the case of the plaintiff that the marriage had been celebrated by exercising force, coercion, threat and ill-treatment etc., by the defendant and the police and therefore it is the case of the defendant that the plaintiff is not entitled to seek the reliefs sought for. Furthermore, the defendant has also raised the contention that the Civil suit is not maintainable for the reliefs sought for by the plaintiff and if at all the plaintiff has any cause of action, he could agitate the same before the special court constituted for the said purpose under the Hindu Marriage Act and accordingly prayed for the dismissal of the plaintiff's suit.

7. The Second Appeal has been admitted only on the point of law as to whether the Civil Court has jurisdiction to grant the relief of declaration sought for by the plaintiff and the consequential permanent injunction prayed for.

8. As regards the alleged love between the plaintiff and the defendant as put forth by the defendant and the consequent marriage said to have been celebrated on 14.02.2001 at the temple in the presence of village elders, the facts placed on record do not vouchsafe the same. As rightly determined by the first appellate court, considering the materials placed on record, particularly, the letter sent by the District Social Welfare Officer marked as Ex.B33, the marriage invitation of the plaintiff with his wife Venda much prior to the alleged marriage between the plaintiff and the defendant marked as Ex.A4, the statement of the villagers marked as Ex.A10, the letter sent to the Inspector of Police marked as Ex.A6 and the other documents exhibited all would go to show that there has not been a valid marriage between the plaintiff and the defendant. On the other hand, it is found that much prior to the alleged marriage between the plaintiff and the defendant as could be seen from the materials placed on record by the plaintiff, the plaintiff had got married with one Venda and such being the position, the contentions put forth by the defendant that she and the plaintiff got married at the temple as per the Hindu rites and customs on the Valentine's day cannot be accepted mainly on the basis of the photo marked as Ex.B1. The first appellate court has gone into the materials placed on record in the right



perceptive and on an appreciation of the same, being centering on factual aspects, rightly come to the conclusion that no valid marriage, as such, had taken place between the plaintiff and the defendant as put forth by the defendant.

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9. The contention has also been raised that the marriage celebrated between the plaintiff and the defendant should be recorded as Seerthirutha Marriage as provided under section 7-A of the Hindu Marriage Act [Tamilnadu Amendment]. However, when there is no pleadings made by the defendant in the written statement that the marriage had been celebrated as provided under section 7-A of the Hindu Marriage Act (Tamilnadu Amendment) and on the other hand, the marriage is said to have been performed as per Hindu rites and customs and there is also no plea that a declaration was made between the parties that the Sreethirutha Marriage took place between them and when there is no material placed on record to safely conclude that the marriage had been celebrated as provided under section 7-A of the Hindu Marriage Act, in all, it is rightly concluded by the first appellate court that no valid marriage took place between the plaintiff and the defendant as alleged by the defendant on 14.02.2001, particularly, when noting that the plaintiff had already been married with one Venda and accordingly, if at all, the defendant had been cheated by the plaintiff one way or the other on account of his alleged rapport with her, the remedy of the defendant is elsewhere and the defendant cannot be allowed to contend that a valid marriage took place between the parties as contended by her.

10. On coming to the question as to the jurisdiction of the Civil Court to entertain the plaintiff's suit, as rightly put forth by the plaintiff's counsel, in the decision reported in A.I.R 2018 Supreme Court 334 [Samar Kumar Roy (D) Through L.F. (Mother) Vs. Jharna Bera], the Apex court has held that for seeking a declaration as to legal character which includes the matrimonial status of the parties to a marriage, when it comes to a marriage which allegedly had never taken place either De jure or De facto held that the Civil Court has jurisdiction to determine the said character of the marriage and the said jurisdiction of the Civil Court has not been barred either expressly or impliedly by any law and the above position of law has been elucidated by the Apex Court in the following manner:

On a reading of the aforesaid propositions, it is clear that the examination of the remedies provided and the scheme of the Hindu Marriage Act and of the Special Marriage Act show that the statute creates special rights or liabilities and provides for the determination of the rights relating to marriage. The Acts



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do not lay down that all questions relating to the said rights and liabilities shall be determined only by the Tribunals which are constituted under the said Act. Section 8 (a) of the Family Courts Act excludes the Civil Courts' jurisdiction in respect of a suit or proceeding which is between the parties and filed under the Hindu Marriage Act or Special Marriage Act, where the suit is to annul or dissolve a marriage, or is for restitution of conjugal rights or judicial separation. It does not purport to bar the jurisdiction of the Civil Court if a suit is filed under Section 34 of the Specific Relief Act for a declaration as to the legal character of an alleged marriage. Also as was pointed out, an exclusion of the jurisdiction of the civil courts is not readily inferred. Given the line of judgments referred to by the High Courts, and given the fact that a suit for declaration as to legal character which includes the matrimonial status of parties to a marriage when it comes to a marriage which allegedly has never taken place either de jure or de facto, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law.

Considering the decision of the Calcutta High Court reported in A.I.R. 1993 Calcutta 203 [Sasanka Sekhar Basu Vs. Miss Dipika Roy] wherein also the jurisdiction of the Civil Court has been held to be not impliedly or expressly excluded to grant the declarative decree under section 34 of the Specific Relief Act as to the legal character of the plaintiff qua the alleged marriage projected by him. In the light of the above position, as contended by the plaintiff, he is entitled to maintain the civil suit for declaring that no marriage at all took place between him and the defendant as sought to be made out by the defendant.

11. In the light of the above reasons, it is found that the first appellate court is justified in coming to the conclusion that the Civil Court has the jurisdiction to grant the reliefs prayed for by the plaintiff and the abovesaid view of the first appellate court is fortified by the decision of the Apex Court as noted above and in such view of the matter, the formulated substantial question of law is accordingly answered against the defendant and in favour of the plaintiff.



12. For the reasons aforesaid, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Arni, Thiruvannamalai District .
2. The District Munsif, Arni, Thiruvannamalai District.

Copy to
The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.V.Raghavachari, Advocate sr.no.65091
+1cc to M/s.Pass Associates, Advocate sr.no.65235

S.A.No.140 of 2015
and
M.P.No.1 of 2015

ssi(co)
nr 27/11/2018