



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.02.2018

DELIVERED ON : 28.04.2018

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) No.243 of 2018

1.S.Kumaran
2.C.Srinivasan
3.L.Ramalakshmi

... Petitioners/Plaintiffs

Vs.

1.G.Uma Maheswari
2.Ganeshmurguan
3.Muthammal

... Respondents/Defendants

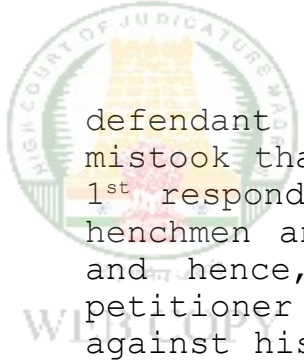
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to direct the learned District Munsif, Sivakasi to number the original suit in unnumbered O.S.No. Nil of 2017 and to take the suit on the file by allowing the Civil Revision petition.

For Petitioner : Ms.S.Mahalakshmi

ORDER

This Civil Revision Petition has been filed by the petitioners seeking a direction to the learned District Munsif, Sivakasi to number the original suit and to take the suit on file.

2.The 1st petitioner is the son of the petitioners 2 and 3. The 1st respondent is the daughter of the respondents 2 and 3. According to the petitioner, the respondents were working as daily labourers under the 2nd petitioner, who is running a fireworks concern at Vembakottai. The 1st respondent often pestered the 1st petitioner to get a job for her, as she has studied upto 10th standard and hence, the 1st petitioner arranged a house keeping job in a bungalow at Bangalore and she joined in that job without informing the same to her parents on 09.09.2016. While so, the respondents 2 and 3 gave a complaint to the Police for girl missing. Subsequently, when the 1st petitioner came to know about the complaint given by the respondents 2 and 3 before the Police, the 1st petitioner asked the 1st respondent as to whether she informed about her stay and job to the respondents 2 and 3. She replied that she did not disclose about anything to her parents. Realizing the seriousness, the 1st respondent afraid of meeting the situation and requested the 1st petitioner to help her. Hence, the 1st petitioner took the 1st

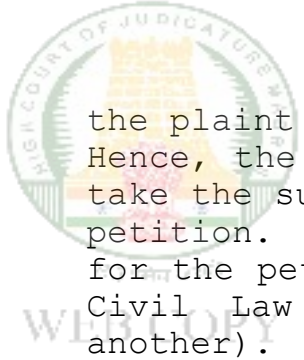


defendant to Sivakasi on 04.11.2016. The 2nd and 3rd respondents mistook that the 1st petitioner had lead a matrimonial life with the 1st respondent at Bangalore and therefore, with the help of their henchmen and police, they tortured him to marry the 1st respondent and hence, on the very same day ie., on 04.11.2016, the 1st petitioner tied "Thali" on the 1st respondent under coercion and against his will and wish. But, the rituals and customs of a Hindu Marriage were not followed. Immediately after such incident, the 1st petitioner handed over the 1st respondent to her parents and returned back to his work place at Bangalore. In this regard, the 1st petitioner has sent a complaint to the Superintendent of Police, Virudhunagar on 10.12.2016. Subsequently, the petitioners came to know that the respondents have pre-planned and has been acting upon with a mala fide intention to grab money and wealth from the petitioners. Hence, the petitioners have sought to prefer the suit for the following reliefs:

- a) Declaring that the so called marriage took place between the 1st plaintiff and the 1st defendant at Vinayakar Temple at Sattur on 04.11.2016 as null and void.
- b) Directing the defendants, their men, relatives, agents and assignees, etc., from in any way disturbing the peaceful possession and enjoyment of the plaintiffs in the suit property by way of a permanent injunction.
- c) to pass such other and further reliefs as may deem fit and proper in the circumstance of the case and render justice.

3. When the petitioners presented the plaint, it was returned by the Court below pointing out certain defects and questioning the maintainability. The learned counsel for the petitioners has made an endorsement to the effect that as the 1st petitioner was unable to file a petition under Section 12 of the Hindu Marriage Act for declaration of the marriage as null and void, within one year from the date of marriage, they have presented the present plaint for the above said reliefs. The Court below, by a docket order dated 22.12.2017, again returned the plaint for complying with the earlier directions. Hurriedly, without there being any specific order about the rejection of the plaint, the petitioners have come up with this civil revision petition challenging the said docket order and seeking a direction to the Court below to number the suit. When this Court pointed out that it is not an order to be challenged, the learned counsel for the petitioners erased the said relief and requested this Court to consider the relief of direction.

4. The learned counsel for the petitioners submitted that as the 1st petitioner could not file a petition under Section 12 of the Hindu Marriage Act, 1955 for declaration of marriage as null and void within one year from the date of marriage, the petitioners have presented the plaint under Order 7 Rule 1 of the Code and therefore, the same is maintainable and that the trial Court has failed to accept the detailed written endorsement made by the plaintiffs with regard to the maintainability of the suit and it has simply returned



the plaint with an endorsement to comply with the earlier direction. Hence, the trial Court may be directed to number the plaint and to take the suit on file. Thus, he prayed to allow this civil revision petition. In support of the above contention, the learned counsel for the petitioners has relied on the judgment reported in 1997 (I) Civil Law Journal 572 (Prafulla Bala Biswas Vs. Ila Das and another).

5. Heard the learned counsel for the petitioners and perused the records carefully.

6. Though initially this Court had hesitation to deal with this case as the petitioners have come up with this petition without there being any specific order rejecting the plaint and taking this matter would be the result of interfering with the jurisdiction of the Court below, considering the fact that the valuable time of the Court and the parties would not be wasted, this Court has decided to take up this matter.

7. The question to be decided in this case is:

Whether a suit can be filed under Order 7 and Rule 1 C.P.C. for declaration of marriage as null and void, when there is a specific bar under Section 12(2) of the Hindu Marriage Act, 1955 to file the same after one year?

8. At this juncture, this Court is inclined to extract Section 12 of the Hindu Marriage Act, 1955 hereunder:

"12.Voidable marriages.-(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

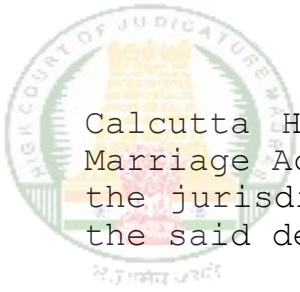
(b) that the marriage is in contravention of the condition specified in clause(ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section(1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of



Calcutta High Court has held that there is nothing in the Hindu Marriage Act or the Special Marriage Act to bar such suit or to oust the jurisdiction of the Civil Court to entertain such suit. Hence, the said decision is not applicable to the facts of this case.

12. In this case, the learned counsel for the petitioners has categorically admitted that there is a specific bar under Section 12 of the Hindu Marriage Act for the relief sought for the petitioners under the said grounds and hence, the petitioners have preferred the suit under Order 7 Rule 1 C.P.C. No doubt, it is true that nullity of marriage is a different status than divorce. However, when the special Act viz., the Hindu Marriage Act, 1955 mandates to file a petition seeking such relief within one year on the grounds specified therein, the petitioners cannot seek to extend the scope by filing a suit under Order 7 Rule 1 of C.P.C.,. If the relief sought for by the petitioners granted, the purpose of the special enactment would be diluted. Hence, the direction sought for by the petitioners cannot be granted.

13. In the result, this civil revision petition is dismissed. No costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To
The District Munsif, Sivakasi.

Copy to:

The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai (2 Copies)

order made in
C.R.P (PD) (MD) No.243 of 2018
28.04.2018

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AM/JC/SAR 4/07.06.2018/5P/4C