



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARANC.R.P.(PD) (MD) No.1012 of 2017
and C.M.P. (MD) No.4565 of 2017

1. Subramani
2.Nallasivam
3.

... Petitioners/Petitioners/Plaintiffs

-vs-

1. Karthikayini Nallasivam
2.Mr.S.Maheswaran

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the Fair and Decreetal Order in I.A.No.395 of 2016 in O.S.No.39 of 2016 on the file of the Court of District Munsif at Theni.

For Petitioners : Mr.C.Samadharm Arasu
For Respondents : No Appearance

Orders Reserved on:	27.04.2018
Orders Pronounced on:	07.06.2018

O R D E R

The revision petitioners are the plaintiffs in the suit in O.S.No.39 of 2016 on the file of the District Munsif Court at Theni and the suit was filed seeking the relief of declaration to declare the marriage between the defendants 1 and 2 as null and void and various other reliefs. Pending disposal of the suit, the plaintiffs took out an application in I.A.No.395 of 2016 in O.S.No.39 of 2016 for sending the signature in the affidavit in I.A.Nos.278 and 279 of 2016 for comparison with other documents, namely, Vakalath and Ex.A5 (Memorandum of Marriage) and also for obtaining opinion as well as report from an expert. The said application was dismissed by the Trial Court, on the ground that Ex.A5 was not marked in the suit, aggrieved by which, the present revision petition has been filed.

2. It is the case of the revision petitioners that the 1st and 2nd plaintiffs are blood brothers and the 1st defendant is the daughter of 2nd plaintiff and the 2nd defendant is the son of 1st plaintiff, meaning thereby that they are brother and sister. While so, on 06.04.2015, the defendants got married to themselves and marriage on the next day itself. It is the further case of the petitioners that there is a prohibitory relationship between the defendants existing on account of their marriage and



therefore, the fathers of both the defendants have conjointly filed the suit for declaring the marriage as null and void.

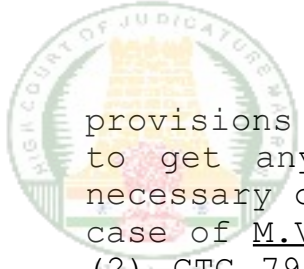
3. The revision petitioners further state that the defendants / respondents are working in Gujarat and there is no possibility of the 1st respondent herein coming to Periyakulam for signing the affidavit. According to the petitioners, the signature as found in the affidavit in I.A.Nos.278 and 279 of 2016 is a forged one and unless or until, the same is sent for comparison with an assistance of an expert, the truth will not be brought out and the Court will be forced to proceed in the matter based on the false affidavit filed before it. Therefore, it is prayed that the order of the Trial Court has to be set aside.

4. Heard the learned counsel for the petitioners and there is no representation on behalf of the respondents / defendants. This Court has perused the entire records available.

5. It is a strange case, where the fathers of the defendants have approached this Court to declare the marriage of their children as null and void on the ground of prohibitory relationship, as it is the claim of the petitioners that they are blood brothers. The meaning of blood brother, as could be seen from the dictionary, is that a man who has sworn to treat another man as a brother, typically by a ceremonial mingling of blood. In other words, though they were not born to a single parent, they would have made themselves a bond to live like own brothers. According to them, the defendants are working in Gujarat and since their whereabouts were not known earlier, the father of the 1st defendant filed a Habeas Corpus Petition before this Court for production of her daughter and on such production, the marriage between the defendants came to light. Immediately thereafter, the petitioners rushed to the Court by filing a suit with the relief stated supra.

6. The defendants at the time of argument in the suit have filed two I.A.Nos.278 and 279 of 2016 for reopening the case for the purpose of cross examination of P.W.1 and also for recalling P.W.1, in which, the defendants are stated to have signed the affidavits, which, according to the petitioners, is not at all possible, as they did not come to Periyakulam for signing the affidavit and they were on duty in Gujarat on the date mentioned therein. Therefore, it is the claim of the petitioners that the signatures are forged one and they played fraud upon the Court. To find out the truth, they approached the Trial Court for sending those signatures for comparison with the admitted documents so as to come to a definite conclusion, which came to be dismissed by the Trial Court on the ground that Ex.A5 (Memorandum of Marriage) had not been marked in the suit as evidence.

7. It is to be noted that under Section 75(e) of the Code of Civil Procedure, the Court is empowered to issue commission to hold a Scientific, Technical or Expert investigation and as per the



provisions of Rule 10-A, a discretion is vested with the Civil Court to get any scientific investigation conducted only if it thinks necessary or expedient in the interest of justice. This Court in the case of M.Venkataswamy (deceased) vs. Mythira Devi, reported in 2017 (2) CTC 79 has observed that the basic rationale of the provisions is that if the opinion of the Scientific Investigation is going to help in extracting the truth and determining the controversy raised in the dispute before the Court, then such an investigation could be permitted. The basic idea is whether such Scientific Investigation is going to advance the cause of justice and would be necessary for adjudication for the rights of the parties.

8. Admittedly, the revision petitioners are none other than the fathers of the defendants and they alone disputed their own children's signatures in the affidavit, as they would certainly be well-versed with the signatures of their children. If the dispute had been raised by any third party, then this Court could not go into the veracity of the dispute and no one is permitted to obtain an order from the Court on the basis of any forged documents.

9. Moreover, a reading of Section 73 of Evidence Act contemplates that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

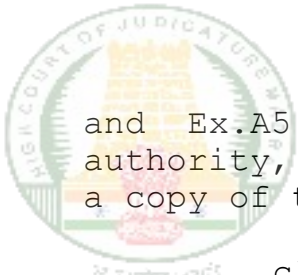
10. The Trial Court has not gone into all these aspects and has simply dismissed the application without considering the purpose as well as the importance of the petition, on the mere ground of non marking of Ex.A5, which, in the considered opinion of this Court, is not sustainable. In addition, the defendants have not produced any documentary evidence to show that they only signed the affidavits, as they did not file any counter even before the Trial Court.

11. Hence, in view of the foregoing discussions and observations and finding force in the contention raised by the petitioners, this Court is of the view that the order passed in I.A.No.395 of 2016 in O.S.No.39 of 2016 by the learned District Munsif, Theni is liable to be set aside

12. In the result,

a) this civil revision petition is allowed and the order passed in I.A.No.395 of 2016 in O.S.No.39 of 2016 by the learned District Munsif, Theni is hereby set aside;

b) the learned District Munsif, Theni is directed to send the signature as found in the affidavit in I.A.Nos.278 and 279 of 2016 for comparison with the admitted documents, namely, Vakalath



and Ex.A5 (Memorandum of Marriage) to an expert / concerned authority, within a period of one month from the date of receipt of a copy of this order, for getting a report;

c) on receipt of the report, the learned District Munsif, Theni is directed to dispose of O.S.No.39 of 2016 within a period of four months thereafter by conducting the trial of the case on day to-day basis without giving any unnecessary adjournment to either parties and both the parties shall render their fullest cooperation for disposal of the suit within the time stipulated supra;

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To:

1. The District Munsif,
Theni.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.C.Samadharm Arasu, Advocate SR.No. 67564

ORDER IN
C.R.P. (PD) (MD) No.1012 of 2017

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JM/SV MMS/SAR 2/19.06.2018/4P/5C