



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on : 14.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.864 of 2018

Sabeena

.. Petitioner

vs.

Kaleeswaran

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to direct the Family Court, Tiruchirappalli to number the Unnumbered H.M.O.P.No. 2018 on the file of the Family Court, Tiruchirappalli.

For Petitioner

: Mr.C.Jeyaprakash

for Mr.K.M.Karunakaran

ORDER

This Civil Revision Petitioner is filed against the docket order of the learned Family Court Judge, Tiruchirappalli made in an unnumbered H.M.O.P.No. of 2018 under Article 227 of the Constitution of India, seeking for a direction to number the above H.M.O.P.

2.The Revision Petitioner is the wife of the Respondent herein. According to the Revision Petitioner, her marriage was solemnized with the respondent herein was a love marriage. Further, it was solemnized at Thalipparamba Temple at Kannanur District of Kerala State on 08.04.2012 as per Hindu rites and custom. Since her marriage was solemnized against the wishes of their Parents, they had no occasion either to print marriage invitation or to take photographs. It is the further contention of the Petitioner that after their marriage, both of them were living at Kannanur District for nearly about 1 ½ years. Out of their wedlock a male child was born to them on 06.04.2013 and the birth of the child was duly registered with the authorities concerned, the birth certificate of their son namely K.Karthi was produced as Doc.No.2 in the list of documents annexed along with the divorce Petition.



3. After sometime, there arose a dispute between the Petitioner and the Respondent. It is the contention of the Petitioner that she was ill treated by her husband, the Respondent herein and the same could not be tolerated as a result, the Petitioner herein filed Divorce Petition before the Family Court at Trichy on the ground of cruelty. The said Divorce Petition was returned by the learned Judge on 13.03.2018 with a direction to the Petitioner herein to produce marriage receipt issued by the Hindu Temple at Thalipparamba and any other relevant documents to show that the marriage between the Petitioner and the Respondent was solemnized on 08.04.2012.

4. I heard Mr.C.Jeyaprakash for Mr.K.M.Karunakaran, learned counsel for the Petitioner and perused the records.

5. From the careful perusal of the Divorce Petition filed by the Revision Petitioner and the return endorsements made by the learned Family Court Judge, this Court would be able to see that the marriage between the Petitioner and the Respondent is an inter caste marriage and the same was held at the Hindu Temple in Thalipparamba on 08.04.2012. From the record it seems that originally the Petitioner has filed the Divorce Petition under Section 27(1)(d) of the Special Marriage Act, but subsequently it was altered under Section 13-1(i-a) of the Hindu Marriage Act after the first return was made by the learned Judge.

6. In this case the Revision Petitioner seeking for a direction from this Court to direct the learned Family Court Judge at Trichirappalli to number the above H.M.O.P. In support of her contention that the marriage between the Petitioner and the Respondent was solemnized on 08.04.2012 apart from birth certificate of her Son which was issued by Thalipparamba Municipality, she has also filed Aadhaar Card, Photo showing that the Petitioner was beaten by the Respondent herein and copy of the police complaint. To number the above HMOP the first 3 documents filed along with the divorce Petition are sufficient in the considered opinion of this Court. From the above three documents presumption could be drawn that there was a marriage between the Petitioner and the Respondent as averred in the Divorce Petition. It is for the Respondent to rebut the same or deny the solemnization of marriage held between the Petitioner and the Respondent. But that could be gone into only after numbering the above Divorce Petition filed by the Revision Petitioner and after issuing notice to the Respondent herein.

7. The Learned Judge ought to have seen that it is not the contention of the Petitioner that at the time their marriage at Thalipparamba Temple, they have issued receipt by the temple. Since



it is a love marriage and that too an inter caste marriage, therefore, the Court ought not to have expected any relevant proof as that of in the arranged marriage.

8. In fact, the Hon'ble Apex Court has rendered Judgments in the regard concerning matrimonial issues that male and female could live together without having tied the hold-knot and also held that it is sufficient to prove that both of them are living in a same roof and the children born to them would be treated as legitimate child. The issue of living together is accepted by the Hon'ble Apex Court.

9. At this juncture, it is useful to refer Section 10 of the Family Court Act and the same is extracted hereunder:

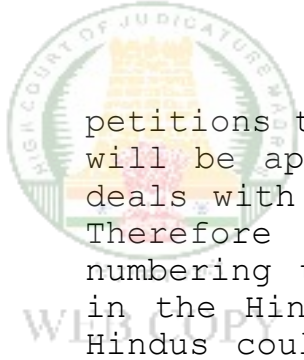
"10. Procedure generally. (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings (other than the proceeding under chapter IX of the Code of Criminal procedure, 1973 (2 of 1974)), before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil Court and shall have all the powers of such Court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made there under, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other.

The procedure prescribed under chap. IV of the Act particularly Ss. 10 and 14 is neither discriminatory nor arbitrary. It is also neither fanciful nor violative of Art. 14 of the Constitution: *lata pimple V. Union of India* AIR 1993. Bom.255 (D.B.)."

10. The perusal of Section 10 of the Family Court Act would disclose that as much as possible the issues between the spouses should be tried to settle amicably. Regarding the procedure to be followed is that except maintenance application, for all other



petitions the procedure prescribed under the Code of Civil Procedure will be applied. Under the Code of Civil Procedure, Order 6 and 7 deals with pleadings and the particulars to be contained in plaint. Therefore the Family Court shall not adopt technicalities in numbering the divorce petition. Moreover, it is not the definition in the Hindu Marriage Act that the marriage between two competent Hindus could be solemnized only by tying THALI, but the convention would prescribe that the groom is to tie thali by putting three knots upon the bride. No one can say that the marriage without tying thali is invalid. Apart from that the object of the Act is to make the court to settle the disputes the spouses, which would be possible when the petition filed by the parties concerned is getting numbered only. Further, it is relevant to discuss here that when the Act itself is enacted for the settlement of the spouses, the court cannot stand in the way by referring technicalities. It is also to be kept in mind, the Act does not say that the marriages solemnized in Temples or Marriage halls alone are valid.

11. Therefore, the endorsements made by the concerned Family Court are not inconsonance with the Hindu Marriage Act and the same cannot be approved in any manner.

12. In view of the discussion made above, I am inclined to direct the learned Family Court Judge, Tiruchirappalli to number the above HMOP filed by the Revision Petitioner within a period of 2 weeks from the date of receipt of copy of this order. The Registry is directed to return the original Petition filed by the Revision Petitioner to her Counsel on record.

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-II)

To
The Judge,
The Family Court,
Trichirappalli.

Copy to:
The Section Officer,
VR. Section,
Madurai Bench Of Madras High Court,
Madurai. (2 Copies)

+1CC to MR.K.M.Karunakaran Advocate in Sr.No.78718.

VSV

DS/KAK/SAR-2 ; 30.08.2018; 4P/5C

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