

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1205 of 2009

Vaishnavi

... Appellant/Petitioner

Vs.

Thompson

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 39 of the Special Marriage Act 1954 r/w. Or 41, Rule 3 of the C.P.C, against the Judgment and decree dated 07.01.2009 made in S.M.O.P.No.176 of 2008 on the file of the Principal District Judge of Chengalpattu.

For Appellant : Mr.B.Ramamoorthy

For Respondent : No appearance

J U D G M E N T

The appellant has filed the present appeal against the impugned order and decree dated 07.01.2009 passed by the learned Principal District Judge, Chengalpattu in S.M.O.P.No.176 of 2008.

2.By the impugned judgment and decree, the learned Principal District Judge has dismissed the said petition with the following observations:- सत्यमेव जयते

"The petitioner is not an illiterate and she seems to be an educated person. It is explained by the petitioner how she gave her consent for the marriage with the 2nd respondent while her first marriage with on Mani Tamizhazhagan was in force. As per law, while the first marriage was in force, the marriage with another person if any, is of course void abinitio.

"8. In the present case the marriage of the petitioner with one ManiThamizhazhagan on 18.02.2008 is proved through Ex.P.1 Marriage Registration certificate. But to prove the marriage with the respondent the petitioner has filed Ex.P.2 which is the xerox copy of Marriage Registration Certificate. She stated that she is unable to get the certified copy of the same. No specific reason has been stated by the petitioner for not getting the certified copy of the Marriage Registration Certificate for the marriage with the respondent. Further, the petitioner has failed to examine the said Mr. Mani Tamizhazhagan as witness on her side to prove her case. Moreover, the petitioner has not examined any independent witness to prove her contentions.

9. Even according to the petitioner, now she is living with her parents. If the said marriage with the respondent was coercive, the petitioner, after her return to her parental home, could have very well made a complaint against the respondent before the police. But it is not even alleged that complaint has been lodged against the respondent. Therefore, the contention of the petitioner is unbelievable. For the reasons best known to the petitioner, she had filed this petition without any certified copy or original marriage Registration certificate for the marriage with the respondent, which is material to prove the case. Therefore, under these circumstances this Court is of the view that the claim of the petitioner deserves to be dismissed."

3. The only reason that is discernible from reading of the above passage from the impugned order and decree dated 07.01.2009 is that the petitioner has filed the petition for divorce without certified copy of her marriage with the respondent which is material to prove the case.

4. Heard the learned counsel for the appellant. Though notice has been served on the respondent, there is no representation on behalf of him. The respondent had also remained absent before the Principal District Judge in S.M.O.P.No.176 of 2008.

5. The learned counsel for the appellant submits that xerox copy of the marriage certificate can be introduced as a

secondary evidence under Section 63 of the Indian Evidence Act, 1872. In this connection, the learned counsel relied upon the decision of this Court in the case of Amutha Beellarmine Corera Vs.Elsie Villavarayer reported in 2007 (5) CTC 206 wherein reads as follows:-

"8.A close reading of Section 63(2) would show that copies made from original by mechanical processes which in themselves ensures accuracy of the copy fall within the category of secondary evidence. In this Case, the respondent has not anywhere disputed the accuracy of the copy made from the original. Therefore, when the accuracy of the copy is assured, certainly the xerox copy sought to be proved in evidence will fall under the category of secondary evidence as defined in Section 63 of the Evidence Act."

6. I have perused the impugned order and decree passed by the learned Principal District Judge in S.M.O.P.No.176 of 2008. The reasoning of the learned Principal District Judge to dismiss the said petition is flawed inasmuch as on the date of the alleged marriage between the appellant and the respondent on 21.5.2008, the appellant was already a married person and her marriage with one Mani Tamizhazhagan was subsisting and that she had filed H.M.O.P.No.77 of 2008 only on 25.08.2008.

7. Having concluded that a prior marriage subsisted between the appellant and the said Mani Tamizhazhagan on the date of the appellant's marriage with the respondent and 21.05.2008, the learned Principal district Judge ought to have allowed the petition filed by the appellant.

8.The learned Principal District Judge ought not to have insisted on the certified copy of the marriage certificate between the appellant and the respondent to proceed further. Since prior marriage solemnised between the appellant and the said Mani Tamizhagan was already subsisting as on 21.5.2008, the marriage between the appellant and respondent on the said date null and void. No further evidence was required for entertaining and allowing in S.M.O.P.No.176 of 2008.

9.In the light of the above reasoning, I am of the view that the impugned order and decree passed by the learned Principal District Judge in S.M.O.P.No.176 of 2008 is liable to be set aside. Accordingly, S.M.O.P.No.176 of 2008 filed before the Principal District Judge, Chengalpattu stands allowed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Chengalpattu.

Copy to

The Section Officer,
Vernacular Records,
High Court, Madras-104.

+1cc to Mr.B.Ramamoorthy, Advocate Sr.98667

C.M.A.No.1205 of 2009

rsk[co]
srg 17/09/2020

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