

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.10.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.6 of 2007

Velmurugan : Appellant/Appellant/Petitioner

Vs.

1. Indira Gandhi

2. The Medical Board at Rajiv Gandhi
Government Hospital,
Poonamalle High Road,
Chennai - 600 003

3. The Director,
Forensic Sciences Department,
No.30-A, Kamarajar Salai,
Mylapore, Chennai - 600 004
(Respondents 2 and 3 are suo-motu
impleaded as party respondents
vide order dated 17.06.2019)

: Respondents/Respondents/Respondents

Civil Miscellaneous Second Appeal is filed under Section 28 r/w Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 11.07.2006 made in C.M.A.No.3 of 2006 on the file of the learned Additional District Judge (Fast Track Court No.III), Virudhachalam in confirming the Judgment and Decree dated 22.07.2005 made in H.M.O.P.No.3 of 2004 on the file of learned Principal Subordinate Judge, Virudhachalam and to allow the present appeal.

For Appellant : Mr.M.V.Karunakaran

For Respondents : Mr.S.Arunachalam
Amicus Curiae for R1
Mr.T.M.Pappiah for R2 and R3
Special Government Pleader

J U D G M E N T

The appellant has filed the present Civil Miscellaneous Second Appeal seeking to set aside the Judgment and Decree dated 11.07.2006 made in C.M.A.No.3 of 2006 on the file of the learned Additional District Judge (Fast Track Court No.III), Virudhachalam in confirming the Judgment and Decree dated 22.07.2005 made in H.M.O.P.No.3 of 2004 on the file of learned Principal Subordinate Judge, Virudhachalam.

2. The case of the appellant/husband is that the H.M.O.P.No.3 of 2004 was filed under Section 11 r/w Section 5(1) of Hindu Marriage Act, 1955 for declaring the marriage held on 18.11.2003 between the appellant and 1st respondent at Kattuparur as null and void. The appellant and the 1st respondent are adjacent land owners of the agricultural lands and the appellant owns a house at Valasai village, Virudhachalam taluk. The appellant's family owns fifteen acres of agricultural lands and the respondent family has only one acre of land. While so, with a view to grab the lands of the appellant herein, one Kolanji, Panchayat President and the father of the 1st respondent and other persons have joined together and used the 1st respondent as a tool, thereby the 1st respondent had lodged a complaint against the appellant under Sections 417 and 376 IPC before the Inspector of police, Mangalampet Police Station, as if the appellant had raped her. On 10.11.2003 the said Inspector of Police has taken the appellant and his father and had kept them in custody till 17.11.2003. Further, the police personnel have forced the appellant and his father by misusing their powers and they had obtained signatures in various blank papers and they have fabricated certain documents, as if the appellant was responsible for the pregnancy of the 1st respondent and as if he had promised to marry the respondent. The above said persons have abducted, forced and threatened the appellant and his father and confined them in a hut. At about mid night, they took the appellant to Adhikesava Perumal Temple and forced him to tie a thali on the 1st respondent, who was already there and they had taken photographs forcibly. Till 21.11.2003, the appellant and his father were confined in the hut and only after they were released on 25.11.2003, the appellant herein had filed a petition under Section 11 r/w Section 5(1) of Hindu Marriage Act, 1955 to declare the marriage as null and void. It is the further case of the appellant that he could not give any police complaint because the 1st respondent's family had threatened that they would take severe action against him.

3. It is the case of the 1st respondent / wife that she and the appellant are taking care of the cattles and they are adjacent land owners. The appellant had promised the 1st

respondent that he will marry her and therefore, she had acceded to the request of the appellant and became pregnant. In view of the same, the 1st respondent insisted the appellant to marry her, but he evaded and took her to the Doctor at Virudhachalam for abortion and the said Doctor had refused to do so and informed the respondent's parents that child has grown up and abortion is unsafe. Thereafter, the parents of the 1st respondent have reported the love affair to one Krishnan and one Kolanji and his associates, who are the village heads. In consequence, they convened a panchayat in the village, wherein the appellant's father had given evading response and the appellant had not even attended the panchayat stating that he suffered diarrhea. Since the appellant and his father did not agree for panchayat, the panchayatdars have advised the 1st respondent to give a police complaint. Accordingly, the 1st respondent herein had given a police complaint on 17.11.2003 before the Mangalampettai police station and they had given a CSR and on enquiry, the appellant and his father agreed to marry the 1st respondent and the same was given in writing before the said Police. Thereafter, the appellant was released on 17.11.2003. After making arrangements, on 18.11.2003, the appellant and the 1st respondent and their relatives went to Kattuparur, Arulmigu Aadhikesava Perumal Thirukoil in a tractor trailer and solemnised the marriage, as per Hindu Rites and Customs. On the next day, appellant's father, took the 1st respondent to her parents house and left her stating that since she is pregnant, she should be nourished properly with good food. Thereafter, the appellant had sent a legal notice to the 1st respondent and for the same, a valid reply was given. The trial court, examined all the parties and the documents marked. After considering the evidence on both sides the trial court, has come to the conclusion that the marriage is valid one and dismissed the H.M.O.P.No.3 of 2004 filed by the appellant / husband by Judgment and Decree dated 22.07.2005.

4. Aggrieved against the Judgment of the trial Court, the appellant, has filed an appeal before the Lower Appellate Court in C.M.A.No.3 of 2006 and the same was also dismissed on 11.07.2006 as against the Judgment and Decree of both the courts, the appellant herein has filed the present Civil Miscellaneous Second Appeal.

5. The learned counsel for the appellant submitted that the appellant himself was examined as P.W.1 and his father, viz., Ramasamy was examined as P.W.2. Notice dated 25.11.2003 was marked as Ex.P.1 and the reply Notice dated 13.12.2003 was marked as Ex.P.2. He would further submit that the appellant and his father were illegally detained from 10.11.2003 to 17.11.2003 with regard to the alleged complaint given by the 1st

respondent/wife for the alleged offences under Sections 417 and 376 of I.P.C. The Inspector of Police, Mangalampettai Police Station has coerced, threatened the appellant and his father and obtained signatures in blank papers and fabricated documents, as if the appellant is responsible for the pregnancy of the 1st respondent and made him to tie thali on the 1st respondent.

6. It is represented on behalf of the appellant that R.W.5, Aadhikesava Reddiar, who is the trustee of Aadhikesava Perumal koil of Kattuparur is admittedly a friend of Kolanji, R.W.3 for over three years and hence, R.W.5 was amenable for fabricating Exs.R3 and R4 and in view of the same, the marriage held between the appellant and the respondent on 18.11.2003 is null and void and thereby pleaded to allow this appeal.

7. The learned counsel for the appellant in support of his contentions has relied on the following Judgments:-

(i) Ankiamma V. Bamanappa reported in A.I.R 1937 Madras 33 at Pages 5&7 and R.Sankaranarayanan V. Anandhavalli reported in (1998 2 MLJ Page 490, wherein it is held that when a person was forced to tie thali, the marriage is invalid.

(ii) Nishit Kumar V. Anjali reported in A.I.R.196 Calcutta Page 105, wherein it is held that delivery of the child after 167 days of marriage, while pregnant at the time of marriage, the said marriage is null and void.

(iii) Balbir Kaur V. Meghar singh reported in AIR 1984 Patna and Haryana Page 417, wherein it is observed that if consent is obtained by force and fraud, the marriage is null and void.

(iv) Jadav Kumar V. Pushpa Bai reported in AIR 1944 Bombay Page 33

(v) Baldev Raj Miglani V. Urmila Kumari reported in AIR 1979 S.C.Page 879 wherein it is held that if pregnant at the time of marriage and the delivery of the child is within 224 days of marriage, then, the marriage is null and void.

(vi) State of Haryana V. Bhajan Lal reported in A.I.R.1992 S.C.Page 604, wherein it is held that the 'First Information Report relating to cognizable offence - duty of officer-in-charge of police station - information disclosing cognizable offence laid before aforesaid officer - he has no option but to register case on basis thereof'

(vii) Mahadeva Rao V. Yesoda Bai reported in AIR 1962 Madras Page 141 wherein at Paragraph No.3 among other things, it is stated as under :

'3..... I am afraid that the relevant birth register extracts are totally useless and they do not constitute evidence against the revision petitioner. Section 35 of the Indian Evidence Act has been referred to by the learned counsel for the respondent, but that would merely make the entries in such documents relevant

facts, if the entries had been made by public servants acting in the discharge of their duties. In all these other documents the column relating to the informant is not filled up, and, as far as we can gather, the name of the father must have been furnished by the respondent herself. That is not evidence of paternity being a unilateral statement by an interested party.....'

(viii) Parkash Chander V. Parameshwari reported in AIR 1987 Patna and Haryana Page 37 wherein at Paragraph No.16 among other things, it is observed as follows:

'16..... I am not oblivious of the fact that the entry regarding date of birth in the Register of Births is a prima facie piece of evidence but at the same time it is not conclusive in nature. Moreover such a birth entry which attributes parentage of the child to a man outside the lawful wedlock does not carry any presumption of its correctness unless there is direct evidence as regards the informant or else the person who is entered as the father of the child admits its paternity. I can safely rely for this view on B.Mahadeva Rao. Yesoda Bai, AIR 1962 Mad 141.....'

(ix) Nagayasami Naidu V. Kochadi Naidu reported in AIR 1969 Madras Page 39 wherein among other things it is held that

'....Under Section 35 of the Evidence Act (I of 1872), it is only the entry made by a public servant in the discharge of his official duties that is admissible as a relevant fact other particulars not strictly covered by the entries are not admissible under Section 35 of the Evidence Act. The name of the child recorded in a birth registration extract was inadmissible under Section 3 of the Evidence act, the entries do not require the officer to record the name of the child.....'

(x) Thimmakku V. Rangappa reported in AIR 1977 Karnataka Page 115 wherein it is held that 'entries in the birth register is not evidence concerning paternity'.

(xi) P.V.Sabu V. Mariakutty reported in AIR 1998 Kerala Page 86 wherein it is held that 'presumption under Section 112 of Evidence Act is applicable only when there is a valid marriage.'

8. The learned counsel for the respondents would contend that the appellant had married the 1st respondent in the presence of Village people on 18.11.2003 and the same was performed according to Hindu Rites and customs. Further, a suitable reply was given to the legal notice issued by the appellant, hence the present appeal to declare the marriage as null and void is not at all maintainable under the Law and

accordingly, prayed to dismiss the present appeal filed by the appellant.

9. Heard the learned counsel on either side and perused the documents placed on record.

10. From the complaint, it is seen that the appellant's family had tried the appellant to get married with another person at Malaiyanur and hence the 1st respondent's side had preferred a complaint before the police station. Further, as per the panchayat, the appellant's family initially agreed to marry the 1st respondent, but, later made arrangements to perform marriage with some other person and hence police complaint was given. The 1st respondent in her evidence has stated that her marriage was different and after getting pregnant she got married and the appellant's family did not welcome her and only after they tried to evade her, she had given a police complaint. Further, the appellant has accepted to marry the 1st respondent and the same was given in writing and on 18.11.2003, the appellant proceeded to temple and within five minutes, the marriage was performed between the appellant and the 1st respondent.

11. It is also seen from the circumstances and from the evidence produced that the 1st respondent belongs to a poor agricultural family and she fell in love with the appellant, who is a big landlord, owning 15 acres of land. The appellant utilised the 1st respondent for his purpose and at later point of time, he evaded from marrying her and only after she became pregnant and that too in a advance stage, he has taken the 1st respondent to the Doctor. The said Doctor had advised the 1st respondent to deliver the child stating that since the child has grown, she cannot abort the child. Further, only when the appellant's family had not accepted for the marriage, the 1st respondent's family have proceeded to inform the panchayatdars and since in the said panchayat, the appellant's family did not agree the 1st respondent for marriage, they have given a police complaint on 17.11.2003.

12. On a perusal of the records produced by the police authorities, it is seen that the appellant and his family members are witnesses and they were examined by the police. Further, the appellant had given an undertaking that he will marry the 1st respondent on 17.11.2003 and on next day, the marriage has been taken place and if at all the marriage was a forced one, the appellant would have given a complaint immediately, but, he has not chosen to do so. The appellant has only stated that he was detained in the hut after the marriage and was released on 21.11.2003 and after 3 or 4 days he had issued a notice dated 25.11.2003, is not supported by any

material evidence. The evidence given by the village panchayadars and the police authority would throw a light on the case, wherein the Inspector has submitted that he has given a CSR and called them for enquiry and only after that, the appellant had given an undertaking that he will marry the 1st respondent, therefore, the Inspector of Police did not register any FIR.

13. The Temple Dharmakartha, viz., R.W.5 has stated that the marriage between the appellant and the 1st respondent was registered on 18.11.2003 and they have affixed their thumb impression and signatures and the witnesses have also signed. He has also endorsed the certificate and has stated that only based on the Maniakkarar's statement, he has written the same in the marriage register. He also submitted that all the records are maintained properly by the temple authorities. It is also seen from the marriage certificate issued by the said temple authorities that the marriage was conducted as per the Hindus Rites and Customs in the presence of witnesses and all the evidence of the persons prove that the marriage was held without any coercion.

14. After the marriage was solemnized on 18.11.2003, the appellant had stated that he was detained for seven days and only at later point of time, ie., on 25.11.2003, he was released and after that he has issued a notice to the 1st respondent. In the said notice, the appellant has stated the same thing that the relatives of the 1st respondent have forced him to pose a photograph as if he is tying thali to the 1st respondent and the marriage was held at midnight on 17.11.2003 and it was only a drama made by the 1st respondent's relative and the marriage is null and void. The 1st respondent has given a suitable reply statement and there is no material evidence produced by the appellant/husband to rebut the same before the courts.

15. From Ex.R.1, [viz., undertaking given by the appellant], it is seen that the appellant has agreed to marry the 1st respondent as per the village head's advice. The marriage certificate, dated 18.11.2003 viz., Ex.R.2 is signed by the parties and all the family members. Ex.R.3 is the receipt produced by the temple, signed by the trustees stating that appellant and the 1st respondent have paid Rs.100/- for their marriage. It is seen that the temple authorities have given a marriage certificate, Ex.R.4 stating that the marriage was held and it has been registered in the Marriage Register book at page no.257 in M.R.No.670/18.11.2003. Ex.R.5 is the child's birth certificate, which would show that a boy baby was born on 11.05.2004. Ex.R.7 is the letter given by the 1st respondent's father stating that since the appellant had agreed for marriage, the said complaint is being withdrawn. Ex.R.8 is the letter given

by the appellant's father stating that since the 1st respondent has become pregnant, he will conduct the wedding of the appellant and the 1st respondent before the village men and other important persons and he has also stated that he is taking his son, Velmurugan from the police station. All these would prove that there was a valid marriage conducted between the appellant and the 1st respondent.

16. Earlier, when it was argued on behalf of the appellant before this Court, stating that the appellant is not the father of the child and he is not responsible for the pregnancy of the respondent, this Court had directed the appellant as well as the 1st respondent and the child to undergo DNA test. The DNA report bearing No.DNA/PAT/109/2019 dated 19.08.2019 produced by the Forensic Sciences Department has been perused. From the said DNA test result, it is proved that said child, viz., Senthilmurugan is born to the appellant, viz., Velmurugan and the 1st respondent, viz., Indiragandhi. The DNA test confirms that the father of the child is the appellant herein and the claim of appellant that he is not the father and he has not made the respondent pregnant, found to be false and proved otherwise by the report produced. Hence the contention of the appellant is proved to be a false statement and the case of the 1st respondent is found to be true.

17. In view of the above facts, it is clear that the paternity of the child, Senthilmurugan is proved and the appellant, viz., Velmurugan is the father and the same has to be accepted by the appellant. The prayer of the appellant to declare the marriage held between him and the 1st respondent as null and void, is dismissed. It is proved beyond all reasonable doubts that the appellant is the father of the child and the case of the respondent is proved and accepted.

18. The case laws referred by the learned counsel for the appellant are not applicable to the present case on hand.

19. It is also brought to the knowledge of this Court that subsequent to the marriage of the appellant and 1st respondent, the appellant, Velmurugan had again married another woman and the said marriage is not a valid one in the eye of law. As no material is produced before this Court to show as when the second marriage was conducted between the appellant and other person, this Court is not able to decide the same.

20. At this stage, the learned counsel for the appellant submitted that the appellant has got various other remedies to challenge the said DNA test and he is willing to do so.

21. It is always open to the appellant to challenge the

said DNA Test. But this Court gives a finding that the child, viz., Senthilmurugan is the son of appellant, Velmurugan and said child is entitled to all rights as the son of Velmurugan.

22. Accordingly, on the above findings, the present C.M.S.A.No. 6 of 2007 filed by the appellant stands dismissed and the orders passed by the courts below stands confirmed. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

ssd

To

1. The Medical Board at Rajiv Gandhi Government Hospital,
Poonamalle High Road,
Chennai - 600 003
2. The Director,
Forensic Sciences Department,
No.30-A, Kamarajar Salai,
Mylapore, Chennai - 600 004
3. The Additional District Judge
(Fast Track Court No.III), Virudhachalam
4. The Principal Subordinate Judge,
Virudhachalam
5. The Section Officer, VR Section,
Madras High Court, Chennai.

+2cc to Mr.M.V.Karunakaran, Advocate, SR.No.87232.

GP(CO)
CSR: 03.03.2020

C.M.S.A.No.6 of 2007