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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9782 of 2018

K.Keerthana

... Petitioner

-Vs-

1. The Registrar of Marriages,
District Registrar Office,
Chennai North Joint-I,
Chennai.

2. Mohammed Sithik

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India for issuing a Writ of Declaration to declare the marriage solemnized between the Petitioner and the Second Respondent before the First Respondent herein in Marriage Certificate Sl.No.521/2017 as illegal and null and void.

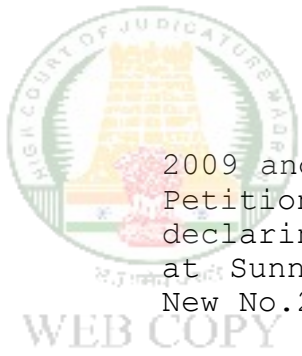
For Petitioner : Mr. G. Karthikeyan

For Respondents: Mr. T.M. Pappiah
Special Government Pleader (For R1)

O R D E R

Heard Mr. G. Karthikeyan, Learned Counsel appearing for the Petitioner and Mr. T.M. Pappiah, Learned Special Government Pleader appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner along with the Second Respondent had submitted a memorandum for registration of marriage in the prescribed form before the First Respondent under the provisions of the Tamil Nadu Registration of Marriages Act, 2009. In pursuance thereof, the First Respondent has registered the marriage of the Petitioner with the Second Respondent on 01.06.2017 at Sl. No. 521/2017 of Register of Marriages maintained under the Tamil Nadu Registration of Marriages Act,



2009 and issued a certificate that the Second Respondent and the Petitioner have furnished the particulars in Memorandum declaring that their marriage has been solemnized on 01.06.2017 at Sunnathul Arafa Muslim Jamath Committee (ASSN), Old No.10, New No.21, Sunguraman Street, Mannady, Chennai.

3. The said certificate of registration of marriage issued is challenged in this Writ Petition seeking a declaration to declare the marriage solemnized between the Petitioner and the Second Respondent before the First Respondent in Marriage Certificate Sl. No. 521/2017 as illegal and null and void. The contention of the Petitioner is that she is a Hindu and that the Second Respondent is a Muslim and in the absence of any registration under the Special Marriage Act, 1954, the First Respondent ought not to have registered the marriage which is said to have taken place between the Petitioner and Second Respondent. In other words, what is sought to be projected by the Petitioner is that in the absence of any prior solemnization of marriage between the Petitioner and the Second Respondent, there is no marital relationship between the Petitioner and the Second Respondent, merely on the basis of the aforesaid certificate of registration of marriage issued by the First Respondent.

4. Though service of notice on the Second Respondent has not been completed in the Writ Petition, the First Respondent has placed copies of enclosures submitted by the Petitioner along with the Memorandum for Registration of Marriage in which there is a certificate of conversion dated 26.05.2017 issued by Sunnathul Arafa Muslim Jamath Committee (ASSN), Old No.10, New No.21, Sunguraman Street, Mannady, Chennai, stating that the Petitioner on her own will and choice embraced Islam in the name Ayisha on that day. This is in contradiction of the claim of the Petitioner that she was a Hindu on 01.06.2017, meaning thereby that there are disputed questions of fact which require to be adjudicated by recording evidence to arrive at the truth of the claim made by the Petitioner.

5. At this juncture, it would be necessary to point out that Explanation (b) to Section 7(1) of the Family Courts Act, 1984, explicitly provides that the Family Court shall have jurisdiction in respect of a suit or proceeding for a declaration as to the validity of both marriage and matrimonial status of a person. The Hon'ble Supreme Court of India in the decision in Balram Yadav -vs- Fulmaniya Yadav [(2016) 13 SCC 308] has held that the disputes that there is no matrimonial relationship between two persons would also necessarily fall within ambit of the aforesaid power conferred on the Family Court.



6. It is also pointed out by the Hon'ble Supreme Court of India in Gullipilli Sowria Raj -vs- Bandaru Pavani [(2009) 1 SCC 714] held that mere registration would not validate a marriage.

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7. It is needless here to recapitulate that the Hon'ble Supreme Court of India in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction under Article 226 of the Constitution of India, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

8. Having regard to the aforesaid legal position viz-a-viz the disputed questions of fact involved in this case, there is no explanation from the Petitioner as to why she has not approached the Jurisdictional Family Court for the relief that has been sought in this Writ Petition.

9. In that view of the matter, the Writ Petition is dismissed. It is made clear that no view has been expressed by this Court on the correctness or entitlement on the merits of the claim made by the Petitioner. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

The Registrar of Marriages,
District Registrar Office,
Chennai North Joint-I,
Chennai.

+lcc to Mr.G.Karthikeyan, Advocate Sr.91636
+lcc to the Government pleader Sr.91507

W.P. No. 9782 of 2018

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srg 09/01/2020