

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
27-04-2019	30-04-2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Appeal Suit No.292 of 2019
and
C.M.P.No.10093 of 2019

Mr.S.Karunakaran : Appellant/Defendant

Vs.

Ms.Srilekha : Respondent/Plaintiff

Appeal filed under Section 19 of Family Court Act read with Section 96 of Code of Civil Procedure against the decree and judgment dated 21.03.2019 decreeing the suit in O.S.No.63 of 2014 by the learned I Additional Principal Judge, (Incharge of III Additional Principal Judge, Family Court, Chennai).

For Appellant : Mr.N.Nagu Sah
For Respondent : Mr.G.Mohanakrishnan

JUDGMENT

[Judgment of the Court was delivered by N. SATHISH KUMAR, J.,]

Aggrieved over the decree and judgment passed by the trial Court in O.S.No.63 of 2014 declaring the marriage certificate as null and void, the present appeal filed by the defendants.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Brief facts leading to the filing of this appeal is as follows :

The plaintiff and the defendant were engineering students in Sakthi Engineering College Thirunindravoor. During their college days, the defendant used to propose his love towards the plaintiff despite her reluctance. On 10.06.2012, at the instance of common friends of both the plaintiff and the

defendant that they all were going to an interview in a company at Mount Road, the plaintiff also joined the defendant and their common friend at Parrys Corner, on 12.06.2012, with necessary certificates and photos etc. When the plaintiff reached the place at 9.00 a.m., the defendant and their friends took the plaintiff towards Collectorate. At that time, while they are having milk at Aavin Parlour, some persons from the office came and verified all certificates and took copies and photos of the plaintiff. Again two persons came and obtained signatures of the plaintiff in printed blank forms stating that those forms are required for verification. The plaintiff had not doubted the behavior of the defendant or any of his friends. After some time, the defendant and few of his friends took the plaintiff inside the office and insisted her to sign in the papers. At that time, she could see that it was marriage forms and the people around her and passers by looked at her badly and smiled sarcastically. The plaintiff's constant refusal to sign on the forms could not fetch any good result. In order to avoid an ugly scene and worst situation and unwanted publicity, the plaintiff signed and came out immediately and shouted at the defendant. The defendant and his friend never allowed her to come out of their wild and cruel circle. The defendant wanted to the plaintiff to accompany him to Tirupathy, claiming that the plaintiff is his wife. The plaintiff got angry and shouted at the defendant. Immediately, the defendant snatched all her original certificates file from the plaintiff and wanted the plaintiff to join him. Fearing danger to her reputation and bodily harm from the fraudulent act of the defendant leaving all certificates, plaintiff had ran away from the scene and reached her home by bus from Broadway.

4. The plaintiff had not reached it to any one because of shame, fear for parents and to get back all original certificates from the jaws of the defendant. The plaintiff tried her level best to get back those certificates from the defendant and the plaintiff requested him to cancel the fraudulent and invalid marriage certificate registered under Registration Certificate No.170 of 2013 dated 12.06.2013. But the defendant started blackmailing and insisting the plaintiff to join him as his wife. It is the contention of the plaintiff that there was no marriage ceremony and there is no consummation at any point of time. Only because of the certificates and fearing society the plaintiff wanted to solve the issue and cancel the certificates secretly. However, on 10.03.2014, the defendant and his gang of persons came to Thirunindravoor Police Station and gave a false report as if the plaintiff has been confined by her parents. The plaintiff issued a legal notice on 12.03.2014 in mild language without accusing him and called for cancelling the registration certificate. But the defendant did

not come forward for cancellation of the marriage registration certificate. Therefore, the plaintiff lodged a complaint in police station on 13.03.2014. Hence, the suit to cancel the marriage certificate.

5. The defendant had filed a written statement stating that after few days of joining in the college they had become good friends with each other from the year 2011. They became very close and expressed their love for each other and the love lead to very close and personal relationship and started living as husband and wife and they had sexual relationship. Due to which the plaintiff got pregnant and the she had undergone abortion many times in the last year of their studies. They had decided to get married on completion of B.E. course. They got married on 12.06.2013 at Neethi Vinayagar Alayam, Mukker Nallamuthu Street, Chennai - 600 001 and the marriage was witnessed by their common friends. After the marriage, their marriage was registered in marriage certificate No.170 of 2013. The plaintiff fully consented for the marriage and the marriage was decided by the plaintiff and the defendant. The plaintiff was not coerced at any point of time and forced into marriage. Denying the allegation of the plaintiff that the defendant was blackmailing, it is the contention of the defendant that after the marriage, they had lunch and the defendant had dropped the plaintiff in her house. Even after marriage, they met twice a week for more than a year and they enjoyed conjugal relationship even after the marriage and for more than three times, as the marriage was not openly known to any body, particularly parents of both parties, the plaintiff and the defendant agreed to abort the child in the womb and the child was aborted. The allegation that the defendant had retained the original certificates of the plaintiff is also denied. Hence, prayed for dismissal of the suit.

6. After filing of the suit, the defendant filed an O.P.No.1464 of 2014 for restitution of conjugal rights. Both the suit and the Original Petition were tried together and common evidence was recorded. On the side of the plaintiff, P.W.1 was examined and Ex.A.1 to Ex.A.5 have been marked. On the side of the defendant, D.W.1 to D.W.5 were examined Ex.B.1 to Ex.B.8 were marked. The trial Court considered both oral and documentary evidence and found that there was no valid marriage between the plaintiff and the defendant and granted decree declaring that the marriage certificate registered under section 8 of the Hindu Marriage Act as null and void. As against which, the present appeal has been filed.

7. At the time of admission of this appeal, heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

8. It is the contention of the learned counsel for the appellant that the trial Court has not appreciated the evidence properly and the finding of the trial Court that there was no marriage is not correct. The trial Court has not even properly appreciated email correspondences between the parties. The marriage has been registered legally. The evidence of D.W.3 also proves the same. When the evidence of D.W.1 to D.W.5 clearly establish the fact that the marriage was validly solemnized and legally registered, the trial Court ought not to have held that the marriage was registered by undue influence, etc. Hence, submitted that the judgment of the trial Court is not on proper appreciation of evidence.

9. The learned counsel appearing for the respondent would content that the trial Court has appreciated the entire evidence and rightly come to the conclusion that there was no marriage at all. Hence, prayed for dismissal of the appeal. In support of his contentions, he has also relied upon the judgment in Mousumi Chakraborty Vs. Subrata Guha Roy reported in 1991 (II) 380 DMC 74.

10. In the light of the above submissions, the following points arise for consideration in this appeal :

1. Whether mere registration of a marriage under section 8 of the Hindu Marriage Act proves the valid marriage?

2. Whether the marriage and its registration was vitiated by undue influence and fraud?

3. Whether valid marriage has been properly proved?

11. The suit itself is filed to declare the marriage between the plaintiff and the defendant, which was registered in Certificate No.408 of 2013 as null and void. The fact remains that the plaintiff and the defendant are students of an engineering college. It is the case of the plaintiff that the defendant used to propose love to her despite her reluctance. In view of the insistence of common friends under the pretext of attending an interview, the plaintiff joined the defendant and common friends in a particular place in Parrys Corner on 12.06.2013 with necessary certificates and photos as requested

by her friends including the defendant. Immediately after joining them in a particular place, the defendant and his friends took the plaintiff to the Collectorate Campus. While having milk at milk parlour, some people came from the office and verified her certificates and two persons also obtained her signatures in printed forms. Then immediately, she was taken inside the office, surrounded by the friends made her to sign in the register. Though she came to know that such register was marriage form, due to surrounded by friends and due to pressure from them, she signed in the form and immediately she went away from the place and reached her home by bus.

12. Whereas, it is the contention of the defendant that from year 2011, they became very close with each other and they expressed their love to each other which culminated into close intimacy, as a result, the plaintiff conceived many times even during their studies. They decided to get married on 12.06.2013. It is his further contention that the marriage was solemnized at Neethi Vinayagar Alayam, Mukker Nalla Muthu Street, Chennai. - 1. Thereafter, the marriage was registered and witnessed by common friends.

13. It is to be noted that in the entire written statement in para 3 having pleaded that the marriage was solemnized at a temple, the nature of the ceremony under which the marriage was solemnized has not been mentioned in the entire written statement. The written statement further goes to show that only at the time of registration of marriage, common friends were present. Be that as it may. The pleadings of both sides makes it clear that the plaintiff and the defendant were in adolescent age at the relevant point of time. Their respective pleading make it clear that both were infatuated with each other. Though it is the contention of the defendant that many times, the plaintiff got pregnant and it has been aborted, no materials whatsoever is available on record to substantiate the above contention. Such allegation has not been proved in the manner known to law. If the contention of the defendant that the pregnancy was terminated, the same could have been proved easily. But that has not been done so.

14. The nature of the allegations and the evidence available on record makes it very clear that the plaintiff has just crossed her 18 years and she is in adolescent age. Even assuming that there was a love affair between them, the defendant being a male member, was in a dominant position to dominate the will of the plaintiff, who is in an adolescent age. The entire pleading of the defendant in the written statement

is to the effect that many times, pregnancy of the plaintiff has been terminated and the same makes it very clear that he is in a dominant position, dominating the will of the plaintiff. When the person in a capacity to dominate the will of others and any unfair advantage taken by such person, the burden undoubtedly is on the person who was in dominating position to establish the fact that the marriage was solemnized with free consent of the other person and following all necessary ceremonies as contemplated under law. From the nature of the pleadings, this Court can visualize that the defendant was in active confidence and therefore, the burden lies on him to show that the marriage conducted or performed with free consent of the plaintiff. As long as the defendant failed to establish the proof of marriage, his contention that the marriage was solemnized, later registered cannot be countenanced.

15. It is the further contention of the defendant that the marriage was performed on 12.06.2013 at Neethi Vinayagar Alayam.

Whereas in the entire pleadings, there is no whisper as to the nature of ceremonies conducted as per Section 7 of the Hindu Marriage Act. A Hindu marriage may be solemnized in accordance with customary rights and ceremonies of either party there to. Sub clause 2 of Section 7 of the Hindu Marriage Act deals with the right in ceremony including 'sapthapathi'. As per Sub Clause 2, marriage becomes complete and binding when seventh step is taken. Section 7(A) is a special provision regarding Suya Mariyadai Seerthirutha marriage has been added with the Act by Act 68 of 1976 with effect from 25.05.1976.

"Section 7 sub clause 2A of the Hindu Marriage Act reads as follows :

(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali."

16. From the above enactment, the marriage can be even performed by declaration by each party that each takes the other to be his wife or husband, as the case may be or each party garlanding other or putting a ring in any finger or by tying of the thali. Therefore, for valid Hindu marriage even under section 7(A), a declaration by each party that each takes the other to be his wife or husband is one of the mode of marriage

or garlanding each other or putting ring upon any of the finger of the other or by tying of thali is also valid marriage. Absolutely, there is no pleadings, whatsoever in the entire written statement as to the nature of the ceremony performed at the time of such marriage.

17. It is further to be noted that it is the contention of the defendant that the marriage was performed in Neethi Vinayagar Alayam. But there is no evidence whatsoever available on record to show that how the marriage was conducted and what are all ceremonies adopted. Even to contend that the marriage is a Suyamariyadai marriage, absolutely there is no evidence. It is also to be noted that in all the temples, which was managed by Hindu Religious Endowment Board marriage is permissible. To substantiate the marriage, normally a certificate will be issued by the temple authorities as proof. Absolutely, there is no evidence whatsoever available on record to show that the marriage was conducted in the temple. For the first time in the evidence of D.W.1, he has spoken, which has not been pleaded. Further, the entire evidence of the defendant as D.W.1 is that only his friends were present at the time of registration of the marriage.

18. The evidence of D.W.3, Sub Registrar when carefully perused, it is seen that the marriage was registered in the Registrar Office on the basis of the certificate issued by one Loganathan, an Advocate of George Town Bar Association certifying that the marriage was performed at the temple. Only on such certificate issued by the said Advocate Loganathan, the marriage was registered under section 8 of the Hindu Marriage Act. Though D.W.4 in his evidence has stated that he was present at the time of marriage, in his evidence, he has clearly admitted that he did not stand as a witness at the time of registration. If really D.W.4 is present at the time of alleged marriage, it is normal conduct for him to be a witness at the time of registration under section 8 of the Hindu Marriage Act. This fact creates doubt over the evidence of D.W.4. D.W.5, claims to be another witness to the registration. His evidence goes to show that he has all along come from Cuddalore on the invitation of the plaintiff and the defendant. He came directly to the temple. However, he did not know the name of the temple. His evidence is also highly improbable. If really the marriage is performed in the temple, there ought to have been many ceremonies taken place. D.W.5 do not know the name of the temple. Hence, his evidence cannot be given much importance to prove the marriage.

18. In the absence of any pleadings as to the nature of ceremonies performed at the time of marriage, the evidence of D.W.1 and D.W.3 that the marriage was performed by exchange of garlands cannot be given much importance. Yet another fact is that after marriage they had physical contact which lead to pregnancy of the plaintiff and pregnancy has also been terminated. This fact is against normal human conduct. As per the pleadings of the defendant and his evidence as D.W.1, it appears that for more than 5 times, pregnancy of the plaintiff has been terminated. In the absence any proof, such pleadings is also highly improbable. The same makes it clear that the pleadings have been only made to non suit the plaintiff. Even photographs to show that the alleged marriage has been performed has not been filed. The evidence of D.W.3 and Ex.A.7 makes it very clear that only on the basis of the certificate issued by advocate to the effect that marriage was conducted, the marriage was registered. The pleading of the plaintiff and her evidence as P.W.1 makes it very clear that she is only at the adolescent age at the relevant point of time and she has not given free consent she was under the control of the defendant may be due to infatuation. When a person is in dominant position to dominate the will of the other uses that position to obtain an unfair advantage over the other, he is deemed to be in a position to dominate the will of another. Hence, the conduct of the defendant being a dominant person dominating the will of the plaintiff taking unfair advantage over the plaintiff, any registration is nothing but undue influence. Therefore, the registration of the marriage is invalid due to undue influence on the plaintiff herein.

19. Section 8 of the Hindu Marriage Act provides registration of Hindu Marriage. Registration has been introduced for the purpose of facilitating the proof of Hindu marriage. Registration itself is not a proof of the marriage and there must be a valid marriage observing all customary rights As per Section 7 of the Hindu Marriage Act. Similarly for the validity under Section 7(A) of the Act, condition enumerated under Section 7(A) of the Act to be proved. But, in this case, there is nothing on record to prove the marriage under Section 7(A) of the Act. As Already stated, there is no pleadings as to the nature of the formalities performed at the time of the alleged marriage in the temple. No priest or Archakar of the temple has been examined. There is no evidence or photographs filed to show that the plaintiff and the defendant exchanged garlands. Whereas, the marriage has been registered with the help and also active support of one of the advocate who issued a certificate that the marriage has been solemnized.

20. The Division Bench of this Court had an occasion to consider the validity of the marriage registered on the basis of the certificate issued by an advocate in a judgment in S.Balakrishna Pandian Vs. The Superintendent of Police, Kanchipuram, Kanchipuram District reported in 2014 (6) CTC 129, wherein this Court has held that the marriage conducted in lawyers chambers cannot be amount to solemnization as required under the 7 and 7A of Hindu Marriage Act and hence the marriage conducted with few strangers around be it a suyamariyathia form will not amount of solemnization of marriage under 7 & 7A of the Hindu Marriage Act and this Court has held that the Certificate of Solemnization issued by Advocates will not be a proof for registering the marriage before the Registrar.

21. Having regard to the facts of the above judgment and solemnization of marriage between the plaintiff and the defendant has not been proved and the relationship of the plaintiff and the defendant during the college days and the fact that the plaintiff is in adolescent age who has just attained majority and the defendant is in a dominant position to dominate her will and the solemnization of marriage not being proved, this Court is of the view that mere registration under section 8 of the Hindu Marriage Act will not give any sanctity in the eye of law.

22. Further, the contention of the learned Counsel for the appellant that email email correspondences between the plaintiff and the defendant has been filed to prove the relationship between them. In this regard, Ex.B.2 a copy of the email said to have been exchanged between the parties has been filed. No doubt, certain photographs had appeared in the above email. It is relevant to note that telegraphic materials cannot be received as an evidence. Mere filing of such email, it cannot be said that those emails have been proved as per law. It is to be noted that sending of electronic message or email has to be proved. Though the Court may presume that the electronic message forwarded to the person to whom such message purports to be addressed and this Court cannot presume that only the plaintiff has sent such email. In this regard, it is useful to refer Section 88 (A) of the Indian Evidence Act. Section 88 (A) of the Indian Evidence Act reads as follows :

"88A. Presumption as to electronic messages.—
The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the

message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.3[88A. Presumption as to electronic messages.—The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent." Explanation.—For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section

(1) of section 2 of the Information Technology Act, 2000."

23. A careful perusal of the above section makes it very clear that the Court shall not make any presumption as to the person by whom such message was sent. Therefore, mere filing of such a message, it cannot be presumed that only the plaintiff has sent the such message. Whether the plaintiff has actually sent the email, the system from which the email has been originated belong to the plaintiff was in her custody and possession has not been established. Therefore, as long as proof as to who has sent such email is established, it is highly difficult to presume that only the plaintiff has sent such email, Ex.B.3 cannot be given much importance, without its proof. At any event as discussed above, the defendant was in a dominant position to dominate the will of the plaintiff as she was in adolescent age, at the verge of her completing her education, any such registration of marriage is certainly under undue influence. Hence, all the points are answered against the appellant and the trial Court after analyzing the entire evidence has rightly dismissed the suit and this appeal is liable to be dismissed.

24. Accordingly, this appeal dismissed and the decree and judgment of the trial Court is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vrc

To

The I Additional Principal Judge,
(Incharge of III Additional Principal Judge)
Family Court, Chennai.

+1cc to Mr.N.Nagu Sah, Advocate, S.R.No.42933

+1cc to Mr.G.Mohanakrishnan, Advocate, S.R.No.42873

A.S.No.292 of 2019

PA(CO)
CS/18/06/2019