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Crl.O.P.(MD)No.1861 of 2016 and

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.04.2019

PRONOUNCED ON : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.1861 of 2016 and

CRL MP(MD)No.951 of 2016

1.Selvin

2.Chandra

3.V.Baskar Rajapaul

4.B.Sumathi

5.Evlin Chella

6.Ashok Kumar Arulraj

7.Sujatha

... Petitioners / Respondents 2 to 8

Vs.

Jeya Sutha

... Respondent / petitioner

Prayer: Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in the petition in DVOP No.11 of 2015 on the file of the learned Judicial Magistrate, Nanguneri, Tirunelveli District and quash the proceedings initiated against the petitioners herein on the basis of the petition filed by the respondent.

For Petitioners : Mr.R.Anand

For Respondent : M/s.T.A.Ebenezer

ORDER

This Criminal Original Petition has been filed by the petitioners / respondents 2 to 8 in DVOP No.11 of 2015 on the file of the learned Judicial Magistrate, Nanguneri, Tirunelveli District to quash the proceedings in DVOP No.11 of 2015.

2.The respondent herein filed a petition under Sections 12 of the Protection of Women from Domestic Violence Act, 2005, on 17.11.2015, before the learned Judicial Magistrate, Nanguneri, praying for shared household and return of 50 sovereigns of gold jewels and household articles.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The case of the respondent before the learned Magistrate in the said DVOP is as follows:

3.1.One Sundar Thangapandian (R-1) is her husband. Respondents 2 and 3 are the parents, respondents 5 and 8 are the sisters, respondents 4 and 7 are the brothers- in -law of the said Sundar Thangapandian, respectively. Respondent 6 is the daughter of respondents 4 and 5.

3.2.The marriage between the respondent and one Sundar Thangapandian, was solemnised on 22.05.2013 at Sub Registrar Office, Thisaiyanvilai. At the time of marriage, 50 sovereigns of gold jewels and household articles and cash Rs.2,00,000/- were given as dowry. After the marriage, they lived in the house of the respondents 2 and 3 as a husband and wife and respondents 4 to 8 often visited their house.

3.2.It is alleged that soon after the marriage, the respondent demanded 50 more sovereigns of gold jewels and Rs.5,00,000/- in order to develop the real estate business of the husband and when she expressed the inability to meet out the demand, they threatened that her husband would marry another woman. They also informed that they had an adopted female child and they had to do baptism in a Church during July 2013 and she replied that there was not even a whisper about the child at the time of marriage and she was harassed by respondents 1 to 3, 7 and 8.

3.3.During July 2013, on second Sunday, the respondents 4 to 6 came to their house, compelled her to do family planning, as she did not need child anymore and when she refused, they had beaten and harassed her. Likely, during July 2013, on third Sunday, they had also driven her out the matrimonial home by demanding Rs.5,00,000/- and 50 sovereigns of gold as additional dowry. From that day onwards, she has been living with her parents. Hence, she filed a petition in DVOP No.11 of 2015, seeking shared household and return of the articles and jewels.

4.As against the proceedings in DVOP No.11 of 2015, the petitioners / respondents 2 to 8 have filed the present Criminal Original Petition, on 29.01.2016, on the following grounds:

4.1.The respondent / wife has not sought any relief as against these petitioners. The husband Sundar Thangapandian had filed DOP.No.129 of 2015, on 23.04.2015, before the learned Principal District and Sessions Judge, Tirunelveli, for declaring the marriage between him and the respondent solemnised on 22.05.2013 as null and void, since the respondent wife had suppressed her earlier marriage with one T. Arularasu and while the said marriage was in subsistence, by suppressing the same, she married Sundar Thangapandian for second time. However, T.Arularasu filed DOP No.169



of 2013 before the III Additional District Judge, Tirunelveli, seeking to dissolve the marriage with the respondent, wherein divorce has been granted only on 01.02.2014, i.e., after the marriage took place on 22.05.2013, between the respondent and Sundar Thangapandian.

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4.2.The present petition has been filed by the respondent wife as a counter blast to the proceedings initiated by Sundar Thangapandian in DOP NO.129 of 2015 on 23.04.2015.

4.3.Moreover, all the respondents are living separately at different places and only in order to wreak vengeance against the husband, these petitioners have been roped in unnecessarily and the allegations are vague and there is no specific allegation against these petitioners and there is no relief sought for against these petitioners.

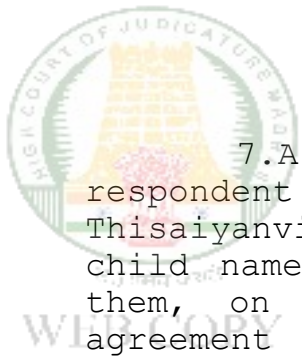
4.4.The learned Counsel for the petitioners also brought to the notice of this Court that the marriage between the respondent wife and Sundar Thangapandian, has been declared as null and void, by order dated 07.12.2015 by the learned III Additional District Judge, Tirunelveli.

4.5.In view of the marriage between the respondent wife and Sundar Thangapandian, has been declared as null and void, she cannot seek any relief as against the petitioners. Hence, the learned Counsel for the petitioners prayed for quashing the proceedings in DVOP No.11 of 2015 on the file of the learned Judicial Magistrate, Nanguneri, Tirunelveli District.

5.Per contra, the learned counsel appearing for the respondent wife submitted that the marriage, which took place on 22.05.2013, between the respondent wife and Sundar Thangapandian is a second marriage for both the parties. He further submitted that the petitioners were very well aware of the existence of a mutual divorce agreement dated 08.05.2013 entered into between by the respondent and the said T.Arularasu. Knowing fully well about the said mutual divorce agreement, the petitioners herein had agreed for the second marriage and only thereafter, the marriage took place on 22.05.2013. At the time of marriage, 50 Sovereigns of gold articles, cash Rs.5 lakhs and other household articles were given as Seethana. But, after the marriage, the petitioners herein as well as the husband started harassing the respondent and also demanded more dowry and both of them have been living separately. Therefore, she has initiated the present proceedings under Section 12 of the Domestic Violence Act and hence, prays for dismissal of the present petition.

6.Heard the learned Counsel for the petitioners and the learned Counsel appearing for the respondent and perused the

<https://www.mca21.gov.in/jsp/servlet/GetContentOfCase.do> on record.



7.A perusal of the materials would show that firstly the respondent had married one T.Arularasu on 07.09.2005 at Thisaiyanvilai CSI Church and out of the said wedlock, they had a child namely Lincy Roniha. Due to differences of opinion between them, on 15.05.2013, both of them had entered into a mutual agreement for separation. Subsequently, on 23.08.2013, the said T.Arularasu had filed DOP No.169 of 2013 before the III Additional District Judge, Tirunelveli, to declare his marriage solemnised with the respondent on 07.09.2005, as null and void and vide order dated 01.02.2014, the said marriage was declared as null and void by the III Additional District Judge, Tirunelveli. In the meantime, the respondent had married one Sundar Thangapandian, on 22.05.2013. It is to be noted here, on the date of marriage of the respondent with the said Thangapandian, i.e., on 22.05.2013, the respondent's marriage with one T.Arularasu, was in subsistence. Though they had entered into an agreement on 15.05.2013 itself, the said marriage was declared as null and void only on 01.02.2014 by a competent Court.

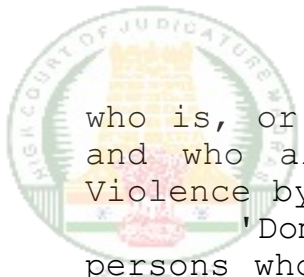
8.It is further to be noted, when the first marriage was in subsistence on the date of second marriage, the second marriage cannot be held to be a valid marriage in the eye of law.

9.Further, the said Sundar Thangapandian had filed DOP No.129 of 2015, on the file of the Principal District and Sessions Judge, Tirunelveli, on 23.04.2015 itself, seeking to declare his marriage with the respondent as null and void and subsequently, by order dated 07.12.2015, the III Additional District Judge, Tirunelveli allowed the said petition and declared his marriage with the respondent as null and void. However, the respondent had initiated the DVOP proceedings only on 17.11.2015, nearly after seven months after the filing of petition by the husband. Therefore, this Court can infer that as an afterthought only the said DVOP proceedings have been initiated by the respondent wife.

10.A perusal of the petition filed by the respondent would go to show that the alleged occurrences are said to have taken place during the year 2013 and the petition has been filed on 17.11.2015. There is no plausible explanation or reasons stated for filing of this petition under Section 12 of the Domestic Violence Act, nearly after two years of the date of occurrence.

11.Since the marriage between the respondent and one Sundar Pandian took place on 22.05.2013 is null and void as the respondent's 1st marriage was in subsistence and subsequently, the competent Court has also declared the said 2nd marriage as null and void, the respondent wife has lost her capacity as wife.

12.The Domestic Violence Act can be invoked by an 'aggrieved person'. Under the Act, an 'aggrieved person' means, any woman who is or has been in a domestic relationship with the respondent.



who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of Domestic Violence by the respondent.

'Domestic Relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

13.It appears that the respondent filed DVOP in her capacity as wife based on the marriage, which is said to have taken place between her and the said Sundar Thangapandian on 22.05.2013. But, the fact remains that the said marriage is declared as null and void in the eye of law, as the same was conducted, when the earlier marriage of the respondent with one Arularasu was in subsistence and moreover, the competent Court has also dissolved the marriage said to have taken place between her and Sundar Thangapandian and hence, the respondent has lost her status as wife and therefore, the petition filed by the respondent under the Domestic Violence Act is not at all maintainable.

14.In view of the above discussion, the proceedings in DVOP No.11 of 2015 on the file of the learned Judicial Magistrate, Nanguneri, Tirunelveli District, is hereby quashed as against these petitioners and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed. However, it is open to the respondent to initiate proceedings for recovery of the articles and jewels in the manner known to law.

Sd/-
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

The Judicial Magistrate,
Nanguneri, Tirunelveli District.

Crl.O.P. (MD)No.1861 of 2016
15.07.2019

dsk

JM/23.09.2019/5P/2C