



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.07.2019  
DELIEVRED ON : 28.08.2019

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**THE HONOURABLE MRS.JUSTICE J. NISHA BANU**

C.M.A. (MD) No.654 of 2018

M.Joseph Kingsly .. Appellant/Petitioner

Vs.

J.Vijayakumar .. Respondent/Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 39 of the Special Marriage Act, against the order dated 07.02.2018 passed in S.M.O.P.No.402 of 2017 by the District Court, Kanyakumari at Nagercoil.

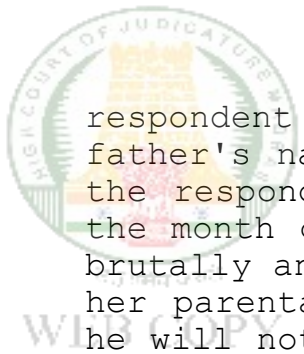
For appellant : Mr.J.John Jayakumar

**JUDGMENT**

This appeal has been filed by the appellant / petitioner as against the order, dated 07.02.2018 passed in S.M.O.P.No.402 of 2017, whereby and whereunder the Court below has dismissed the petition filed by the appellant/petitioner seeking to dissolve the marriage held on 14.06.2002 between herself and the respondent.

2.The brief facts of the case of the appellant/petitioner are as follows:

The appellant and the respondent are Christians. From 24.03.2001, the appellant started to live with the respondent as spouse in a rented house at Coimbatore, without knowledge of her family members. As the respondent had no employment and no source of income, the respondent sold gold ornaments of the appellant/petitioner one by one. On 31.03.2001, the respondent came to the house with full intoxication, assaulted her and caused injuries on her various parts of the body. After some time, the appellant/petitioner became pregnant and gave birth to a male child on 17.03.2002. After delivery, she lived along with her child in the house of the respondent at Tirunelveli for some time. On 14.06.2002, the respondent brought the appellant/petitioner to the Sub-Registrar's Office at Kayathar and directed her to sign in the Marriage Agreement Deed and as such, she signed in the Marriage Agreement Deed without reading it. Now, she found that the



respondent has fraudulently stated his name as Sivakumar and his father's name as Jayasankar in the said deed. The correct name of the respondent is J.Vijayakumar and his father's name is James. In the month of January, 2004, the respondent assaulted the petitioner brutally and stabbed on her stomach. After treatment, she stayed in her parental home. Believing the assurance of the respondent that he will not ill-treat her in future, she joined with the respondent and they lived at Neyyoor in a rented house for about one year. She became pregnant for 2<sup>nd</sup> child. Since the assault of the respondent on her stomach, the child died in her womb. Due to the cruelties of the respondent, she started to live with her son separately and filed the petition for dissolution of marriage.

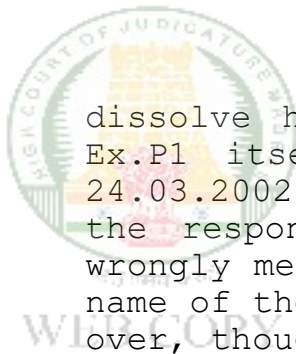
3. The respondent herein remained absent before the Court below and hence, he was set *ex parte*. In support of the relief sought for in the petition, the appellant herself was examined as PW1 and Exs.P1 to P3 were marked. After considering the oral and documentary evidence, the Court below has dismissed the petition holding that the appellant/petitioner has not even pleaded as to whether the marriage was solemnized or not and in the Marriage Agreement Deed - Ex.P1, the name of the appellant/petitioner and the name of the respondent differs and hence, it cannot be relied upon. Aggrieved by the same, the appellant/petitioner has filed this appeal.

4. The learned counsel for the appellant/petitioner submitted that the Court below has failed to consider that the appellant and the respondent are husband and wife, as they were living together as spouse under one and the same roof from 24.03.2001 to 26.07.2011. The Court below has further failed to consider the child born to them and Ex.P2- Family Card and Ex.P3 - Aadhar card, where the name of the respondent is shown as husband of the appellant/petitioner. He would further submit that considering the fact that believing the words of the respondent, the appellant/petitioner signed in Ex.P1 without reading it, the Court below ought to have drawn adverse inference against the respondent and dissolve the marriage held on 14.06.2002. Thus, he prayed to allow this petition.

5. After receipt of notice, the respondent has entered appearance through a counsel. But, that counsel withdrew his appearance reporting no instructions from the respondent. Hence, a fresh notice was ordered. Even after receipt of fresh notice, the respondent did not appear either in person or through any counsel.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. It is seen that the appellant has not specifically pleaded in his petition as to which custom the marriage was solemnized and as to when the marriage was solemnized. Though relying on Ex.P1 - Marriage Agreement Deed, dated 14.06.2002, the appellant prayed to



dissolve her marriage with the respondent held on 14.06.2002, in Ex.P1 itself it is stated that the marriage was solemnized on 24.03.2002. Then, the appellant herself admitted that the name of the respondent and the father name of the respondent have been wrongly mentioned in Ex.P1. A perusal of Ex.P1 would show that the name of the appellant is also wrongly stated in the said deed. More over, though it is stated in Ex.P1 that the marriage was solemnized as per the Hindu Marriage Act at Palani, it is not pleaded so in the affidavit filed in support of the petition.

8. The appellant, relying on Ex.P2 - Family Card and Ex.P3 - Aadhar Card issued to the appellant, submitted that both the documents show that the respondent is her husband. The above document would only show the identity of the appellant. Based on the above documents, it cannot be concluded as to when the marriage was solemnized between the appellant and the respondent. It is seen that the appellant has not filed the petition with necessary pleadings and necessary documents and hence, the Court below has dismissed the petition. This Court does not find any reason to interfere with the order passed by the Court below.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS )

To

1. The District Judge,  
Nagercoil at Kanyakumari District.

judgment made in  
C.M.A(MD)No.654 of 2018  
28.08.2019

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MK (19.09.2019) 3P 2C