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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2020

Date of Verdict : 13.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1768 of 1997

Ambedkumar

...Appellant/Appellant/Defendant

Vs.

Jaya

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. to set aside the decree and judgement passed in A.S.No.35 of 1993 on the file of the Principal Subordinate Judge, Chengalpet dated 31.08.1995, confirming the decree and judgement in O.S.No.91/90 dated 27/01/93 on the file of the District munsif, Maduranthakam and allow the appeal.

For Appellant : Mr.M.Ravindran, Senior Counsel  
for Mr.A.Charles Darwin

For Respondent : Mr.K.Meenakshi Sundaram

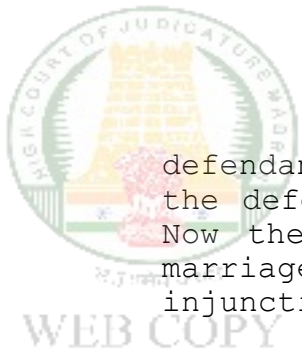
#### J U D G M E N T

This second appeal is preferred as against the judgement and decree dated 31.08.1995, passed in A.S.No.35 of 1993 on the file of the Principal Sub-Judge, Chengalpattu District, confirming the judgment and decree dated 27.01.1993 passed in O.S.No.91 of 1990 on the file of the District Munsif Court, Maduranthagam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows:-

3.1. The suit is filed for declaration and permanent injunction. The plaintiff is the wife of the defendant. He married the plaintiff by putting a ring to the plaintiff in Chunambedu Village. Both of them lived together as husband and wife and while being so, in the month of October 1989, the



defendant deserted her. In fact, she was also conceived through the defendant and she is now in an advanced stage of pregnancy. Now the defendant is making arrangement to perform his second marriage. Hence, the suit for declaration and also for permanent injunction.

4. The defendant resisted the plaintiff's case and filed written statement stating that he never married the plaintiff at any point of time. He also denied the putting of ring to the plaintiff and got married her. Further stated that there was negotiation between both the families for marriage, since the defendant came to understand that she has got illicit relationship with so many persons, so the marriage proposal for her marriage was given up. He never had sexual relationship with the plaintiff and as such, he is no way reason for her pregnancy. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. On the side of the plaintiff, P.W.1 to P.W.3 were examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendant, he examined DW-1 and three documents were marked as Ex.B.1 to Ex.B.3. Based on the materials placed on record both the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant filed an Appeal Suit in A.S.No.35 of 1993 and the same was dismissed. Aggrieved by the same, the defendant preferred this appeal.

6. At the time of admission of this second appeal, the following substantial questions of law were formulated for consideration:

- i) Whether the declaration of status of wife shall be decided without making any specific prayer asto the declaration of solemnisation of marriage or its validity?
- ii) Whether the marriage shall be held valid without fulfilling the legal ingredients required under the Hindu Marriage Act or Special Marriage Act?
- iii) Whether the legal presumption asto the secret marriage between the plaintiff and defendant drawn by the Courts below is valid, as there was no cohabitation between them established?

7. The learned Senior Counsel appearing for the defendant submitted that there was no valid performance of marriage between the plaintiff and the defendant. Although no legal formalities required under the provision of Hindu Marriage Act, there is absolutely no pleading to fulfil the provision of Section 7(A) (b) of Hindu Marriage Act. Accordingly, the



marriage should be solemnized in the presence of relatives and friends or other persons. In the plaint, except the pleading of putting up a ring, there is absolutely no mentioning about the presence of the relatives, friends or other persons. The plaintiff was examined as P.W.1 and she also did not speak about the presence of others as required under Section 7(A) of Hindu Marriage Act. In fact, except the P.W.2, who is none other than the mother-in-law of P.W.1's brother deposed that the relatives are present at the time of marriage, no one was examined to fulfil the provision under the Hindu Marriage Act.

To support of his contention, the learned Senior Counsel appearing for the defendant relied upon the following judgements:-

- (1) 2009 (1) CTC 481, in the case of Sharmila Devi vs. S.Sridhar
- (2) 2012-3-L.W.422, in the case of Leelavathy vs. A.Velayutham.

8. Per contra, the learned counsel appearing for the plaintiff submitted that this second appeal was already dismissed for default for non-prosecution on 03.07.1998 itself. Thereafter, the defendant filed the application to restore the second appeal with the condone delay petition. In support of the said petitions, the defendant filed affidavit in which he categorically stated that the plaintiff is his wife. Therefore, the defendant categorically admitted that the plaintiff as his wife and as such, the admitted fact need not be proved. In fact, this second appeal was referred before the Mediation Centre for negotiation and the defendant agreed to pay a sum of Rs.10.00 lakhs before the Mediation Centre for full and final settlement. He further submitted that the suit itself was filed only for declaration, declaring that the plaintiff is a legally wedded wife of the defendant. In fact, after his second marriage a complaint was lodged by the plaintiff and the same was registered in Crime No.14 of 2003. After filing final report, the same has been taken cognisance in C.C.No.64 of 2004 on the file of the learned Judicial Magistrate, Madhurantakam, Kancheepuram District. The Trial Court convicted the defendant for the offence under Section 494 of I.P.C., and as against which the defendant filed an appeal in C.A.No.2 of 2014, on the file of the Principal District and Sessions Court, Chengalpattu and the same was also confirmed the conviction and sentence imposed against the defendant. Aggrieved by the same, the defendant filed revision before this Court in Crl.R.C.No.1336 of 2017. At the same time, the plaintiff also filed appeal against acquittal for offence under Section 498(A) of I.P.C., against the defendant in Crl.A.No.687 of 2018, both were clubbed together by this Court and by the common judgement dated 20.03.2019, allowed the appeal filed by the plaintiff and



confirmed the conviction and sentence imposed on the defendant for the offence under Section 498(A) of I.P.C. Though this Court set aside the conviction and sentence imposed for the offence under Section 494 of I.P.C., the relationship between the plaintiff and defendant construed as husband and wife, since after exchanging ring, they lived together and also gave birth to a male child. Therefore, she prayed for dismissal of this appeal.

9. The plaintiff claimed to be wife of the defendant. Due to love affair between them, they exchanged ring with each other and lived together. Due to which she also conceived through the defendant and gave birth to a male child. The plaintiff was examined as P.W.1 and the mother-in-law of her brother was examined as P.W.2., the birth certificate of her son was marked as Ex.A.6. The complaint sent by the plaintiff were marked as Ex.A.1 to Ex.A.3. The P.W.1 categorically stated that after the proposal of marriage between the plaintiff and the defendant, his father expired and thereafter exchanged the rings between themselves and solemnised the marriage. They were living together and also gave birth to male child. The P.W.2 deposed that in the presence of relatives, the plaintiff and the defendant exchanged their rings and solemnised the marriage. Thereafter, they lived together as husband and wife in Chunambedu Village, due to their wedlock they also gave birth to male child and his birth certificate also reveals that the defendant is the father of their son.

10. The learned Senior Counsel appearing for the defendant cited the judgement of the Hon'ble Division Bench of this Court reported in 2009 (1) CTC 481, and the relevant Paragraph Nos.7, 12 & 13 are extracted hereunder:

"7. According to the pleadings, there was a marriage between the parties, in the presence of the friends of both sides, on 2.3.1997 and that the appellant had become pregnant. The pleadings did not show in what form they had actually married, except to state that the marriage was held as per the provisions of Section 7-A of the Act. In her counter, the appellant had denied the marriage and had also denied the pregnancy and the termination thereof. In the oral evidence, P.W.1, the respondent, would depose that they had exchanged rings and garlands and that for the wedding, his friends and her friends had come, "திருமணத்திற்கு என்னுடைய நண்பர்களும். எதிர்மனுதாரர்களின் நண்பர்களும் வந்திருந்தார்கள்" and that her parents did not come. He had stated that in June 1997, the appellant had become pregnant and against his will, she had terminated her pregnancy. In his cross-examination, he had admitted that he had written the letters, Exs.R.1 to R.3. In the cross-



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examination he had stated that the wedding ring was purchased by the appellant's sister. P.Ws.2 to 4 are the friends of the respondent. P.W.2 had stated that he had gone to the respondent's office at No.9, Muthukumaraswamy Street on 2.3.1997 and that at that time, the respondent and his friends were there and the appellant and her sister Umadevi were there and that they exchanged rings and garlands. He has denied the suggestion that he is lying to help his friend. P.W.3 is a person who is a resident of the same street as the appellant herein. According to him, it was the respondent who contacted him over telephone and asked him to go over to the office in March, 1997. According to him, on that date, the appellant and the respondent exchanged rings and garlands. P.W.3, in his cross-examination, has mentioned that the appellant's sister alone had come there. P.W.4 had also stated to that he went to the respondent's office on his request and that both the parties exchanged rings and garlands.

12. In fact, in A.I.R. 1965 S.C. 1564 [Bhaurao vs. State of Maharashtra], the Supreme Court held the bare fact that a man and a woman were living as husband and wife does not, at any rate, normally give them the status of husband and wife. Long cohabitation may, in some cases, give rise to presumption of marriage. But that cannot apply to this case where the pleadings are to the effect that on a specific date, the couple got married. When this is not proved, then the basis of the petition falls. In (1994) 4 S.C.C. 363 [Jolly Das vs. Tapan Ranjan Das], the appellant prayed for a declaration that the marriage with the respondent was a nullity on the ground that her consent was obtained by fraud. The appellant was taking music lessons from the respondent. According to her, her signatures were obtained on blank forms and she did not realize that there had been a registration of marriage. On the side of the respondent, several witnesses were produced to speak as to the proof of the marriage. The Supreme Court held that since the registration of the marriage is admitted, their evidence need not be referred to, since the only question is whether her signatures were obtained by fraudulent misrepresentation. However, the Supreme Court held that their evidence did not inspire much confidence and they were all persons connected in one way or the other with the school run in the house of the respondent.



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13. In the present case also, three witnesses who were roped in to speak of the marriage are all known only to the respondent and according to them, they were asked by the respondent to be at his office premises at a particular time on the relevant date. In view of the other contradictions which have already been spoken of, their evidence also does not inspire much confidence. In the case cited supra, there was actually a marriage certificate issued by the Marriage Officer. In spite of that, the Supreme Court held that except the marriage certificate, there is no trace of the marriage. Of course, in that case, it was factually found that there was no consummation of marriage, whereas in the present case, there appears to have been some intimacy between the appellant and the respondent, but there is no satisfactory evidence with regard to the performance of the marriage between the two. As discussed earlier, when the very performance of the marriage is not proved, there is no basis whatsoever for the petition."

11. He also cited the judgement in the case of Leelavathy vs. A.Velayutham reported in 2012-3-L.W.422, and the relevant Paragraph No.15 is extracted hereunder:

"15. The appellant/defendant has clearly admitted that there was no customary or registered marriage between the plaintiff and defendant and only contended that both of them married as சுயமரியாதை திருமணம் (Suyamariyathai marriage). On the side of the plaintiff, he has denied the above said marriage and only contended that during the time of working as Manager at Masakkalipatti, the defendant had intimacy with the plaintiff and after transferred to Chinnaseeragapadi, there was no such relationship and the defendant legally married only Thilagam and got two children and since the defendant has given false complaint before the Police, the plaintiff has filed the suit for declaration that the defendant is not the wife of the plaintiff and permanent injunction against the defendant in any way interfering with the family affairs of the plaintiff."

12. The Hon'ble Division Bench of this Court held that the pleadings did not show in what form they had actually married, except to state that the marriage was held as per the provisions of Section 7(A) of the Act. Therefore, marriage itself is a invalid one. Whereas, in the case on hand, the P.W.1 and P.W.2 categorically deposed that the plaintiff and defendant exchanged rings with each of them and at the time of their marriage, the



relatives and friends were also present. Further this Court already confirmed the conviction against defendant for offence under Section 498 (A) of I.P.C. Therefore, the relationship between the defendant and plaintiff were categorically proved and their marriage also proved in accordance with the provision under Section 7 (A) of the Hindu Marriage Act.

13. The learned Senior Counsel submitted that the marriage was not solemnised in the manner known to law, though they fell in love affair and their marriage was not solemnised since the requirements for the provision of law under Section 7 (A) is not fulfilled by them. It is relevant to extract the provision under Section 7(A) of the Hindu Marriage Act, 1955:

"7-A. Special provision regarding suyammariyathai and Seerthiruththa marriages. - (1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnised in the presence of relatives, friends or other persons -

(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

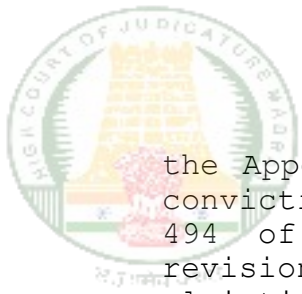
(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali."

14. The P.W.1 and P.W.2 deposed that the plaintiff and the defendant exchanged their rings with each other and solemnised the marriage. The PW-2 also deposed that at the time of their marriage relatives and friends were very much present. Further it is seen that the Ex.A.1 to A.3 revealed that she made complaints to the employer of the defendant and it also revealed about the exchange of their rings and performance of their marriage.

15. Further the plaintiff lodged a complaint for the offence under Section 498 (A) and 494 of I.P.C., against the defendant on the file of the Inspector of Police, Melmaruvathur, Kancheepuram District. On receipt of the same, F.I.R. was registered in Crime No.14 of 2003 and after completion of investigation, final report was filed. The learned Judicial Magistrate had taken cognisance on the final report filed in Crime No.14 of 2003 for the offences under Sections 498(b) and 494 of I.P.C., in C.C.No.64 of 2004 against the defendant.

16. The trial Court found guilty for those offences and imposed conviction and sentenced him to undergo imprisonment. As against which the defendant filed appeal in C.C.No.2 of 2014 and



the Appellate Court partly allowed the appeal and set aside the conviction and sentence imposed for the offence under Section 494 of I.P.C. Aggrieved by the same, the defendant filed revision before this Court in Crl.R.C. No.1336 of 2017. The plaintiff also filed an appeal against the acquittal for the offence under Section 498 (A) of I.P.C., in Crl.A.No.687 of 2018 both were clubbed together and this Court allowed the revision filed by the defendant and also allowed the appeal filed by the plaintiff and convicted and sentenced for offence under Section 498 (A) of I.P.C., against the defendant. In fact, as against the said conviction, the defendant also preferred Special Leave Petition before the Hon'ble Supreme Court of India and it is pending. Therefore, the relationship between the plaintiff and the defendant have been construed as husband and wife by this Court and convicted the defendant for the offence under Section 498 (A) of I.P.C. Therefore, both the Courts below rightly concluded and declared the plaintiff as a legally wedded wife.

17. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly for upholding the case of the plaintiff. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiff and as against the defendant.

18. In fine, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

1. The Principal Subordinate Judge,  
Chengalpattu District.
2. The District Munsif,  
Maduranthakam.



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V.R.Section,  
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+lcc to Mr.K.Meenakshi Sundaram, Advocate Sr.3082

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