



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.11.2020

Pronounced on : 23.12.2020

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.11345 of 2018

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U.Kalatheeswaran

... Petitioner

-vs-

1. The District Registrar,
Department of Registration,
Karaikudi,
Sivagangai District.
2. The Sub Registrar,
Department of Registration,
Chensai, Karaikudi Joint - II,
Sivagangai District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to receive the petitioner marriage registration application and register the petitioner marriage with Parimala Devi, daughter of Ganesan, Sura Nagar, Verugal Mugathuvaram, Mavadichenai, Tiruconamalai, Sri Lanka under Section 15 of the Special Marriage Act, 1954.

For Petitioner : Mr.P.Muthusamy

For Respondents : Mr.K.Sathiya Singh
Additional Government Pleader

ORDER

The Writ Petition has been filed seeking issuance of a Writ of Mandamus, to direct the respondents to receive the petitioner's marriage registration application and register the petitioner's marriage with Parimala Devi, daughter of Ganesan, Sura Nagar, Verugal Mugathuvaram, Mavadichenai, Tiruconamalai, Sri Lanka, as per Section 15 of the Special Marriage Act, 1954.

2. The learned Counsel appearing for the petitioner would submit that the petitioner fell in love with one Ms.Parimala Devi, D/o. Ganesan, while working at Bahrain from 31.10.2013 to 25.11.2015 and the said Parimala Devi is a Sri Lankan Citizen. Thereafter, with the consent of both families, the petitioner married Ms.Parimala Devi on 25.05.2018 and even though the petitioner is a citizen of India, his wife is an expatriate born in Sri Lanka. It is further submitted that the petitioner's wife came to India on a Tourist Visa for three months and during that period her marriage with the petitioner was solemnized on 25.05.2018. Subsequently, the



petitioner approached the second respondent on 14.05.2018 to register the marriage of the petitioner under Section 15 of the Special Marriage Act, 1954, as the said Ms.Parimala Devi is a Sri Lankan citizen and she came to India on a Tourist Visa. Since the second respondent has refused to receive the application, the petitioner has come forward with the present Writ Petition.

3. According to the petitioner, the second respondent has to register the marriage following the procedure prescribed under the Special Marriage Act, 1954 but, unfortunately, the marriage has not been registered by the second respondent. It is relevant to extract Section 15 of the Special Marriage Act, 1954 which reads as follows:

"15.Registration of marriages celebrated in other forms.- Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely: -

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

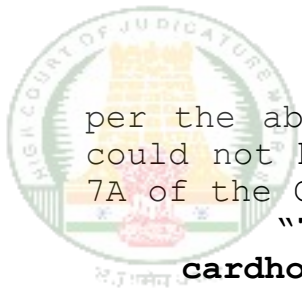
(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage."

4.The respondents have not filed any counter. However, the learned Additional Government Pleader appearing for the respondents would submit that unless a person is not continuously living for a period of two years in terms of Section 7A of the Citizenship Act, 1955, he/she cannot claim citizenship. In this case, the petitioner's wife came to India on a Tourist Visa for a period of three months and in the meanwhile, their marriage was solemnized on 25.05.2018. Therefore, she cannot be termed as an Indian Citizen as



per the above provision. Hence, the registration of the petitioner could not be done. He also drew the attention of this Court Section 7A of the Citizenship Act, 1955, which is extracted hereunder:

"7-A.Registration of overseas citizen of India cardholder. -

(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, registered as an overseas citizen of India cardholder-

(a) any person of full age and capacity, -

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child or a great grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an overseas citizen of India cardholder registered under Section 7-A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section;

Provided that for the eligibility for registration as an overseas citizen of India cardholder, such spouse shall be subjected to prior security clearance from a competent authority in India:

Provided further that no person, who or either of whose parents or grand-parents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India cardholder under this sub-section.

(2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing Persons of Indian Origin Cardholders shall be deemed to be overseas citizens of India cardholders.

Explanation: - For the purposes of this sub-section, "Persons of Indian Origin Cardholders" mean the persons registered as such under notification number 26011/4/98 F.I., dated the 19th August, 2002, issued by the Central

Government in this regard.



3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an overseas citizen of India cardholder."

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5. At this stage, the learned Counsel appearing for the petitioner would submit that the petitioner and his wife are residing in the same place as on date and now, even according to the submission of the learned Additional Government Pleader, the petitioner's wife has been continuously living in India for more than two years and that there is no hurdle for the second respondent to register the marriage of the petitioner.

6. According to the preamble of Special Marriage Act, 1954, there is no condition prescribed that the spouse should be an Indian Citizen and there is no prohibition that an Indian Citizen shall not marry a foreigner, whereas it is specified in the said Act that the parties to the marriage should have been residing within the District of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage. In this case, the marriage of the petitioner and his wife was solemnized on 25.05.2018 and according to the petitioner, his wife was in the same place more than one month before the application was submitted, and also the period of two years have gone by now. Therefore, the wife of the petitioner is eligible to become a citizen of India in accordance with Section 7A of Citizenship Act, 1955 and now, there is no hurdle for the Sub Registrar to register the marriage of the petitioner.

7. The act of the second respondent in blindly refusing to register the marriage is deprecated, as it is the duty of the second respondent to ascertain as to whether the application submitted for registration is duly supported by valid documents and the petitioner fulfils the conditions prescribed under the provisions of Section 15 of the Special Marriage Act, 1954, by giving the following declaration as per the application in Form III:

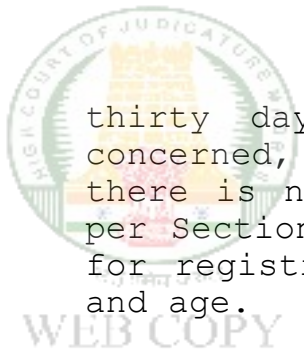
"i) Neither of us has more than one spouse living on the date mentioned in this application.

ii) Neither of us is and idiot of lunatic.

iii) Both of us have completed the age of twenty one year on the date of this application.

iv) We are not within the degree of prohibited relationship. We have been residing within the jurisdiction of the-----."

8. It is relevant to point out that under the Special Marriage Act, the condition prevalent is that the parties have to provide a notice to the Marriage Officer of the District, in which at least, the parties has to reside for a period of not less than



thirty days. As far as the The Hindu Marriage Act, 1955 is concerned, the marriage should be between two Hindus and though there is no time limit of the registration of a Hindu Marriage as per Section 8 of the Hindu Marriage Act, 1955, it should be applied for registration at any time along with a valid proof of marriage and age.

9. In the present case on hand, the second respondent, on being confused with the provisions of Special Marriage Act, Hindu Marriage Act and Citizenship Act, 1955, simply refused to entertain the application to register the marriage. What is required under the Citizenship Act is that the foreigner, who has married an Indian Citizen, must reside in India for a period of two years to claim Indian Citizen. Both the enactments are independent to each other and it cannot be said that a foreigner has to reside in India for two years and thereafter, fall in love with an Indian Citizen or vice versa and in that case, the purpose of Marriages Act itself would become meaningless. Love at first sight is permissible to marry a Hindu alien and register the marriage thereafter, whereas as per the provisions of Special Marriage Act, though Love at first sight is permissible, the parties have to wait for 30 days for conversion of it into marriage

10. If the conditions have been fulfilled by the concerned parties, naturally, there is no impediment for the second respondent to register the marriage and the practice of Government Officials, demanding Court orders for doing their duty should be stopped. It is appropriate to state here that now-a-days, we could notice that there has been several elopements in our State without bothering about their parents, who fed them and brought them to a respectable position. At least, in this case, a consent is said to be taken from both families. There is a general quote that "Love is blind" and in this case, the wife of the petitioner fled away from Sri Lanka in order to join hands with the petitioner. Merely because the wife of the petitioner is a Sri Lankan, it cannot be said that there is no valid marriage and therefore, their marriage cannot be registered under the Special Marriage Act, 1954, in the absence of any such stipulation.

11. In the result, the Writ Petition is allowed. The second respondent is directed to thoroughly scrutinize the documents submitted by the petitioner along with the application and register the marriage of the petitioner. The Inspector General of Registration, Chennai is directed to send a circular to all the Marriage Registering Authorities about the steps / procedures to be taken for registration of such marriages without making the couples to run from pillar to post for registration of their marriages, without applying their mind, as the Officials should not burden the Courts in deciding such type of matters, when statute has given them power to take a decision in one way or the other and they are



case they have any legal hurdles to do their statutory duties, then they can demand orders from Courts, but not in all cases. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

SRM

To

1. The District Registrar,
Department of Registration,
Karaikudi,
Sivagangai District.
2. The Sub Registrar,
Department of Registration,
Chensai, Karaikudi Joint - II,
Sivagangai District.

Copy To:-

The Inspector General of Registration,
100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
R.A.Puram, Chennai - 600028.

+1 CC to Additional Government Pleader SR.No.27235.

Order made in

W.P. (MD) No.11345 of 2018

23.12.2020

(CK) CO

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