



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.11.2020

Pronounced on : 23.12.2020

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.14992 of 2018

K.Selvaranjan

... Petitioner

-vs-

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The District Registrar,
Office of the District Registrar,
Ramanathapuram,
Ramanathapuram District.
3. The Sub Registrar,
Velipattinam Sub Registrar Office,
Ramanathapuram,
Ramanathapuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the third respondent herein to register the marriage between petitioner (Selvaranjan) and his wife namely Yaalvini which was held on 27.05.2018 at Vellariodai Arulmigu Sri Balamurugan Temple in Vellariodai Village in Ramanathapuram Taluk, Ramanathapuram District, by considering petitioner's representation dated 28.06.2018 within the time stipulated by this Court.

For Petitioner : Mr.D.Balamuruga Pandi
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 third respondent herein to register the marriage between petitioner (Selvaranjan) and his wife namely Yaalvini which was held on 27.05.2018 at Vellariodai Arulmigu Sri



Balamurugan Temple in Vellariodai Village in Ramanathapuram Taluk, Ramanathapuram District, by considering petitioner's representation dated 28.06.2018 within the time stipulated by this Court.

2.The learned Counsel appearing for the petitioner would submit that the petitioner, a Hindu, had married one Ms.Yaalvini, a Hindu, who is none other than his uncle's daughter, on 27.05.2018. The petitioner is a citizen of Indian and that his wife is an expatriate born in Sri Lanka. The marriage was performed in accordance with the Hindu Law and that a procedure is followed by the villagers of the petitioner that any marriage performed in their village, it should be entered in the Village Community Register and the villagers have signed as witnesses. It is further submitted that the petitioner's wife came to India on 11.05.2018 and her visa was valid upto 24.07.2018. The petitioner, in order to get citizenship in India for her wife, approached the third respondent on 28.06.2018 with a representation along with necessary document. Though the third respondent received the same, till date no steps have been taken by the third respondent and the same is pending. Therefore, the petitioner has come forward with the present Writ Petition.

3.According to the petitioner, as his marriage was performed in accordance with the Hindu customs, the third respondent has to register the marriage following the procedure prescribed under the Hindu Marriage Act, 1955 but, unfortunately, the marriage has not been registered by the third respondent. It is relevant to extract Section 5 of the Hindu Marriage Act, 1955 which are as follows:

"5.Conditions for a Hindu marriage - A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely: -

(i) neither party has a spouse living at the time of the marriage;

[(ii) at the time of the marriage, neither party -

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

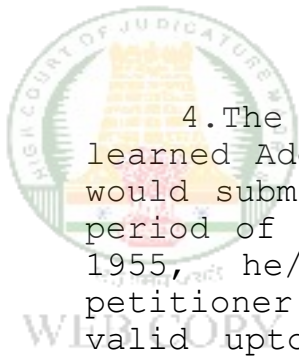
(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity"

(iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two;"



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 11.05.2018 and her visa was valid upto 24.07.2018 and in the meanwhile, their marriage was solemnised on 27.05.2018. 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 reads as under:

"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."

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 is continuously living in India for more than two years and that there is no hurdle for the third respondent to register the marriage of the petitioner.

6. The provisions prescribed under the Citizenship Act, 1955 is with regard to getting citizenship in India. But the petitioner wants his marriage with his wife to be registered so that he can easily approach the authorities concerned for getting registered his wife's citizenship in India.

7. According to the preamble to Hindu Marriage Act, 1955 and Special Marriage Act, 1954, there was no condition 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 Hindu Marriage Act, 1955 that a marriage may be solemnized between any two Hindus, if the conditions specified therein are fulfilled. In this case, the marriage of the petitioner and his wife was solemnized according to the Hindu rites and customs in a temple on 27.05.2018 and the petitioner and his wife are Hindus and residing in the same place as on date, 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.

8. In the result, the Writ Petition is allowed. The third respondent is directed to register the marriage of the petitioner

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based on his application along with necessary documents, as there is no hurdle now for the third respondent to register the same. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

SRM

To

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The District Registrar,
Office of the District Registrar,
Ramanathapuram,
Ramanathapuram District.
3. The Sub Registrar,
Velipattinam Sub Registrar Office,
Ramanathapuram,
Ramanathapuram District.

+1cc to SPL GP SR.No.27233,23102

+1cc to Mr.D.Balamuruga Pandi, Advocate Sr.No.26997

W.P. (MD) No.14992 of 2018

23.12.2020

VB (06.01.2021) 5P 6C