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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 944 of 2009

Sugirtha

..Appellant/Petitioner

Vs

M.Sowridhas

.. Respondent/Respondent

Prayer : Appeal filed under Section 55 of the Indian Divorce Act, 1869, against the decree and judgment passed in I.D.O.P.No. 51 of 1999 dated 22.12.2008 on the file of the Principal District Judge at Chengalpattu.

For Appellant : Mr.K.Hariharan
For Respondent : Mr.I.Paranthaman

JUDGMENT

The fair and decreetal order dated 22.12.2008 passed in O.P.No.51 of 1999 is under challenge in the present civil miscellaneous appeal.

2. The petitioner before the trial Court is the appellant herein. A petition was filed under Section 32 of the Indian Divorce Act, 1869, praying for a decree for restitution of conjugal rights against the respondent. The marriage between the petitioner and the respondent was solemnized on 06.09.1996 at Shrine Velankanni Church, Nagapattinam. The petitioner and the respondent started their matrimonial life happily. It is contended that the family friends Mohan, son of Solomon Yesuadian, Jessy Kamalam, wife of Solomon Yesuadian and Sardar, son of Sheikh Hyder were present as witnesses to the marriage. The appellant in her petition has stated that on account of harassment there was a crack in their matrimonial life and for the interest of the children, the petitioner was continuing with the respondent. At one point of time, it is stated that the respondent avoided the petitioner/wife and deserted her on 11.11.1998. Thus, the appellant/petitioner issued lawyer's notice for restitution of conjugal rights and subsequently filed a petition for restitution.

3. The respondent contested the case. It is stated that the appellant/petitioner is the wife of one Prakasam and the said Prakasam was working in the Central Leprosy Training and



Research Institute at Thirumani and died intestate while he was in service in the year 1990. The respondent was the best friend of Prakasam and the respondent used to visit Prakasam's house while he was alive. After the demise of Prakasam, to help the family, the respondent continued his visit. The appellant/petitioner secured a job on compassionate ground and it is contended by the respondent that there was no marriage between them and the appellant remained as a widow. It is stated that at no point of time, the appellant/petitioner had not contracted marriage with the respondent.

4. The trial Court adjudicated the issues with reference to the documents and evidence. It is not disputed between the parties that the appellant/petitioner is the wife of one Prakasam, who was an employee in the Central Leprosy Training and Research Institute and died while he was in service on 29.04.1990. The appellant/petitioner had left with her children and she secured a job in the same Institute at Chengalpattu on compassionate ground. Ex.P5 is the photo of the petitioner along with the respondent in the Church. Ex.P6 is the negative of the photo together with another photo marked as Ex.P7 and Ex.P8 is the negative showing the petitioner and the respondent together marked through R.W.1 during the course of his cross-examination and considering the evidence and independent witnesses P.W.2 Mohan and P.W.2 Sardar, discloses that the appellant and the respondent married by exchange of ring. Ex.R1 - marriage register extract also reveals the marriage between the respondent and Mary Jagatha dated 29.05.1969. Ex.R2 is the ration card for the year 1998-2003. Ex.R3 is the voters list for the year 1995. Ex.R4 is the voters list depicting the name of the respondent and the said Jagatha. Ex.R5 is the voters list for the year 2000. Ex.R6 is Sl.No.259 and 260 in Ex.R5 reflecting the names of the respondent and Jagatha, together with the evidence of the respondent examined as R.W.1 deposing that his wife Mary Jagatha was working in Panchayat Union School as Teacher and she has retired from the service and getting of pension was not challenged by the appellant which shows that the respondent had already married one Mary Jagatha as early as 29.05.1969.

5. Considering the facts and circumstances as well as the evidence, the trial Court arrived at a conclusion that the marriage between the appellant and the respondent held on 06.09.1996 was evidently a second marriage, while the marriage between the respondent and Mary Jagatha is subsisting. Thus, the marriage between the appellant and the respondent is null and void in the eye of law.

6. When the marriage between the appellant and the respondent is null and void, the question of granting the relief



of restitution of conjugal rights does not arise at all. This being the factum established before the trial Court, with an acceptable evidence, this Court do not find any ground to interfere with the orders of the trial Court and accordingly, the fair and decreetal order dated 22.12.2008 passed in O.P.No.51 of 1999 stands confirmed and the civil miscellaneous appeal stands dismissed. No costs. Consequently, M.P.No. 1 of 2009 is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Principal District Judge at Chengalpattu.

2.The Section Officer,
VR Section, High Court,
Madras - 104.

C.M.A.No. 944 of 2009

GMR (CO)
GN(16/09/2021)