

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 16.08.2021	Orders pronounced on 03.09.2021
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Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.513 of 2021

and

C.M.P.No.4431 of 2021

Dr.R.Veerakumar

... Petitioner

Vs

1. V.Elizabeth @ Victoria Elizabeth
2. The Director of Medical & Rural Health Services
Teynampet, Chennai – 600 018.
3. The Secretary to Government
Health Department
St. George Fort
Chennai – 600 009.
4. The Principal Accountant General (A & E)
Teynampet, Chennai – 600 018. ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 11.01.2021 made in I.A.No.1 of 2019 in O.S.No.116 of 2019 on the file of the V Additional Family Court, Chennai.

For Petitioner .. Mr.R.R.Shivakumar
for
M/s.K.M.Vijayan Associates

For Respondent-1 .. M/s.B.Kalarani

For Respondents 2,3 & 4 .. No appearance

ORDER

This Civil Revision Petition is filed to set aside the order dated 11.01.2021 passed in I.A.No.1 of 2019 in O.S.No.116 of 2019 on the file of learned V Additional Family Court, Chennai.

2. The first respondent, as the plaintiff, filed O.S.No.116 of 2019 against the petitioner/first defendant seeking the relief of declaration that she is the legally wedded wife of the petitioner, who is first defendant in the suit. The case of the first respondent is that she is a widow and through her first husband, she had a female child named Latha and male child named Suresh Kumar. The petitioner, who was working as a Doctor at Government Hospital, Chennai, befriended with the first respondent and proposed to marry her. The first respondent was initially reluctant to accept the proposal for the reason that she is a

widow and has a daughter and son, who is mentally retarded. The petitioner promised to take care of her and her children born through her first husband, as his children. Believing the words of the petitioner, first respondent consented for the marriage and their marriage was celebrated on 10.08.1987 at the first respondent's house. Through this wedlock, a female child named V.Sindhuja was born to them. The petitioner had also executed a registered settlement deed in favour of the first respondent in 2004. From 2005, there was a change in the behaviour of the petitioner. He started to have illegal relationship with several ladies. He cancelled the settlement deed executed in favour of the first respondent. Now, he is disowning the first respondent. First respondent, as the wife, is entitled to maintenance and other benefits. Therefore, this suit was filed.

3. After entering appearance, the petitioner herein filed a petition in I.A.No.1 of 2019 under Order 7 Rule 11 CPC for rejecting the plaint. This petition was resisted by the first respondent herein. The learned V Additional Family Court Judge, Chennai after considering the rival submissions and materials, dismissed the petition among other

grounds that there are triable issues involved in this suit. Against the said order of dismissal, the present Civil Revision Petition is filed.

4. Learned counsel for the petitioner submitted that first respondent's first husband's name is K.S.Chandrasekaran. He died only on 19.07.2016. Assuming and without admitting that there was marriage between the petitioner and first respondent, that marriage is illegal in law. There was no such marriage, as alleged by the first respondent, has taken place as per Hindu rights and customs. First respondent is a Christian and there is no material found to show that she converted as a Hindu before the alleged marriage with the petitioner. This suit is filed only to blackmail the petitioner and get unjust enrichment. It is a clear abuse of process of law. Contracting second marriage during the life time of first marriage is against law, especially under Section 5(1) of Hindu Marriage Act. Therefore, this suit is barred under law. Without considering these legal aspects, learned trial Judge has dismissed the petition. Therefore, the present petition.

5. In response, learned counsel for the first respondent

submitted that there are ample evidence available to prove that the petitioner married first respondent and got a female child through her. The marital relationship with K.S.Chandrasekaran was severed in 1977. It has come to the knowledge of the first respondent that K.S.Chandrasekaran has married one Thangarani and later died on 19.07.2016. The first respondent got herself converted into Hindu religion and then only there was marriage between her and the petitioner on 10.08.1987. Learned counsel for the first respondent also produced copies of Exs.R1 to R18 before the trial court in support of the submission that there was marriage between the petitioner and first respondent and there was a child born through this marriage etc., facts.

6. Perusal of records namely Exs.R1 to R18 shows that first respondent's first husband's name is K.S.Chandrasekaran and he died only on 19.07.2016. There is no qualm over the fact that contracting a marriage when the spouse is living, is illegal. The condition requisite for valid Hindu marriage is that neither party has a spouse living at the time of marriage. Admittedly, in this case first respondent's first husband K.S.Chandrasekaran died only on 19.07.2016. Whereas the marriage

between the first respondent and the petitioner said to have been taken place on 10.08.1987. There is another version introduced by the first respondent that K.S.Chandrasekaran absconded in the year 1977 and thereafter, he married another woman named Thangarani. K.S.Chandrasekaran name was shown as her husband only for her safety and for society. Be that as it may, it is seen from exhibits produced that the petitioner herein filed Crl.M.P No.1115 of 1994 on the file of learned Judicial Magistrate No.II, Tindivanam, seeking direction to register birth of his daughter Sindhuja. In this petition, he claimed himself as father of Sindhuja. It is the case of the first respondent that due to wedlock between herself and petitioner, Sindhuja was born. The order of learned Judicial Magistrate No.II, Tindivanam is produced as Ex.R1. Copy of the settlement deed dated 18.10.2004 shows that the petitioner claims the first respondent as his wife. Petitioner sent a letter to Branch Manager, Indian Bank, Tindivanam with a request to accept his daughter Sindhuja as his nominee. In the election identity card given to the first respondent her husband's name is shown as Veerakumar. First respondent has also produced certain photographs showing her with the petitioner. These documents clearly establish that the petitioner himself admitted that the

first respondent is his wife and he had executed a settlement deed in her favour. He admitted Sindhuja as his daughter. There is no dispute that Sindhuja was born through the first respondent; that he acknowledged Sindhuja as his daughter. It goes without saying that the first respondent is his wife.

7. Of course, as already stated the petitioner filed death certificate of K.S.Chandrasekaran; Election identity card showing K.S.Chandrasekaran as husband of the first respondent. There are evidences available in this case to prima facie conclude that K.S.Chandrasekaran was first respondent's first husband and petitioner is first respondent's second husband. Whether the second marriage between the petitioner and the first respondent is valid and in accordance with law for the reason that there was no official divorce between first respondent and K.S.Chandrasekaran is an issue that required to be proved in the trial before the court. One legal question involved in this case is what is the status of marriage/relationship between the petitioner and first respondent, when she claims that her first husband had absconded her and then, she married the petitioner. There also arises a

question as to the legal status of the first respondent when the petitioner himself admitted her as his wife in the settlement deed. These are mixed questions of fact and law that required to be examined thoroughly after recording the evidence of both parties. This Court concurs with the finding of the learned V Additional Family Court Judge, Chennai that there are triable issues involved in this case. Therefore, this Court confirms the order of learned V Additional Family Court Judge, Chennai in dismissing the petition.

8. In the result, the order dated 11.01.2021 passed in I.A.No.1 of 2019 in O.S.No.116 of 2019 by learned V Additional Family Court Judge, Chennai, is hereby confirmed and this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Mra

03.09.2021

Index : Yes / No

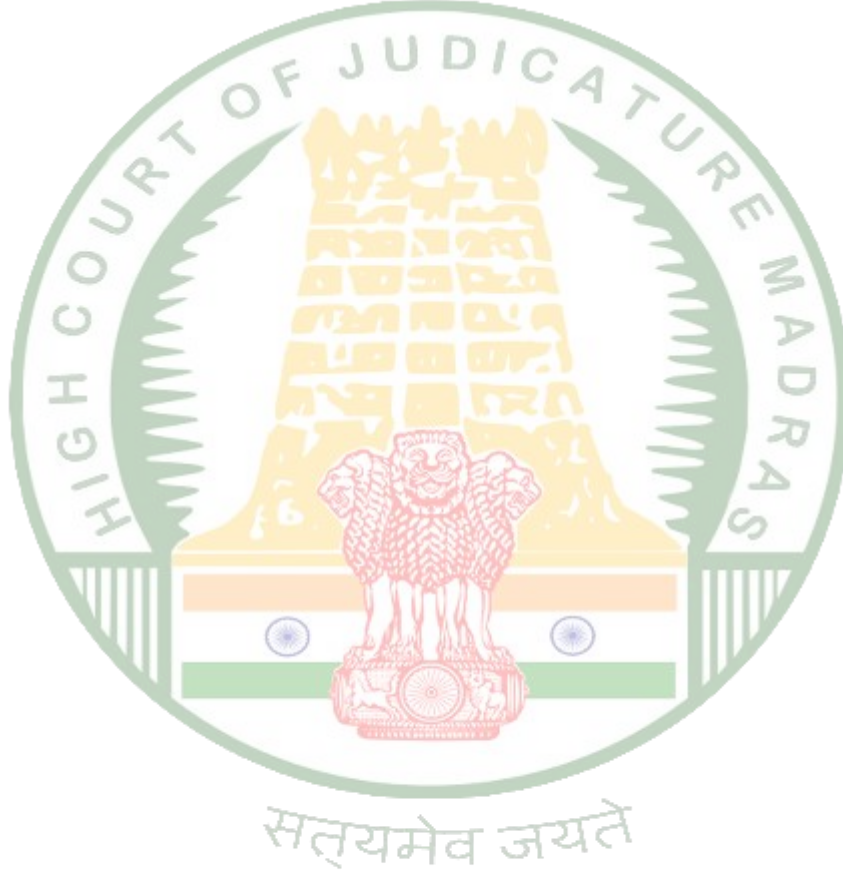
Internet : Yes / No

Speaking order : Yes / No

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To,

1. The V Additional Family Court Judge, Chennai.

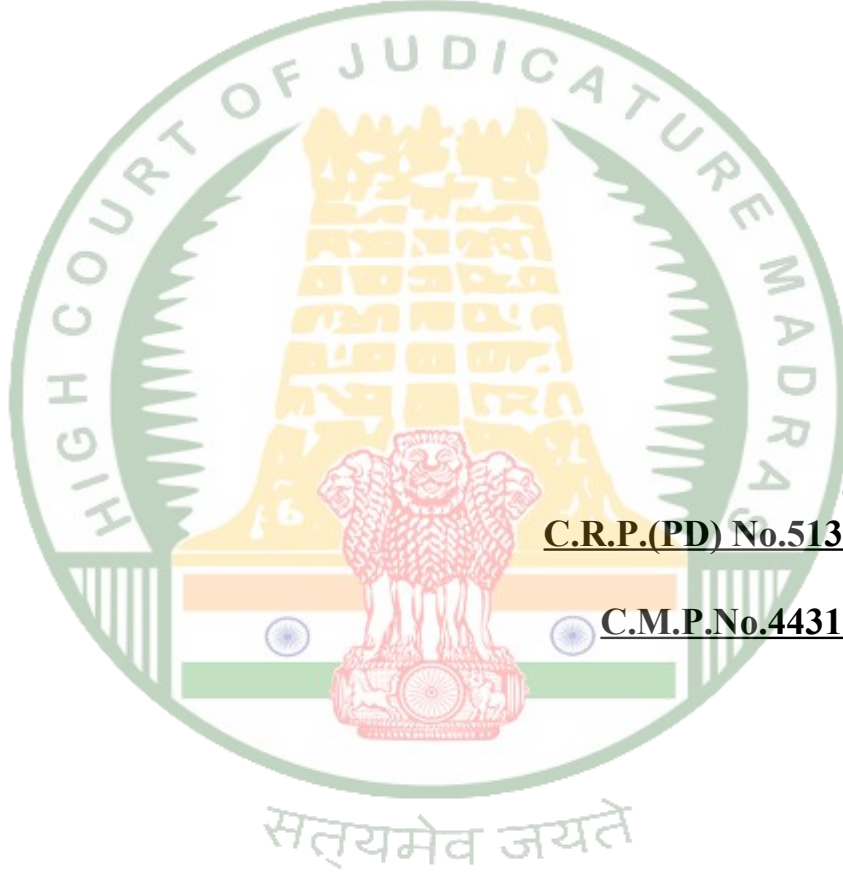


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G.CHANDRASEKHARAN, J.

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