

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.Nos.3968 & 3975 of 2019

M.Suguna
W/o K.Prakash ... Appellant in both the Appeals

-vs-

K.Prakash ... Respondent in both the Appeals

Memorandum of Grounds of Civil Miscellaneous Appeals filed under Section 19(1) of the Family Courts Act, 1984, against the common order and decree dated 06.02.2019 made in F.C.O.P.Nos.30 & 279 of 2017 on the file of the Judge, Family Court, Vellore.

For Appellant :: Ms.A.Vinupradha

For Respondent :: Mr.C.Anbu for
Mr.M.R.Thangavel

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

These two civil miscellaneous appeals have been directed against the impugned common order and decree dated 06.02.2019 made in

F.C.O.P.Nos.30 & 279 of 2017 by the learned Judge, Family Court, Vellore, in and by which the learned trial Judge has allowed the petition filed by the respondent/husband seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act solemnized between the appellant/wife and the respondent/husband on 01.11.2009, invoking Section 11 read with Section 5(i) of the Hindu Marriage Act, and dismissed the petition filed by the appellant/wife seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

2. The facts in brief leading to the filing of the appeals are as follows:-

The appellant and the respondent got married on 01.11.2009 as per the Hindu rites and customs. Before this marriage, the respondent already got married with one Padmavathy who had given birth to two children namely, daughter and son during her lifetime. But due to her ill-health, she died and thereafter, the respondent married this appellant as his second wife. At the time of the death of the first wife, the respondent's daughter and son were too young and the respondent also was working as a Cable Operator, it has been pleaded that for the welfare of the children, he got married the

appellant. When the appellant failed and neglected to take care of the children and never acted as a dutiful wife and started ill-treating the respondent and his two children born through the first wife, problems have occurred. The story of the appellant also is equally the same. She also got married with one Hari, S/o Munusamy and lived at Bangalore. Out of the said wedlock, she gave birth to two children through the said Hari. Thereafter, she had deserted the said Hari and started living separately. By giving false particulars to the respondent, the appellant married him. But she has not got the decree of divorce from the first husband, namely, Hari through a Court of law and in addition thereto, even after the second marriage with the respondent, she started cooking for herself and not for the respondent and his daughter and son and that during 2011, when the appellant started torturing the second husband as well as his daughter and son, to buy peace, the respondent/husband, on the compulsion of the appellant, executed a registered Will in favour of the appellant on 1.4.2011 bequeathing the immovable property as stated in the schedule of the document. Subsequently, she also forced him to cancel the said Will, as she wanted an immovable property in her name through a direct sale deed.

Although the respondent has purchased the property in the name of the appellant for a valuable sale consideration of Rs.1,00,000/-, when the actual value was Rs.8,50,000/-, she did not stop the ill-treatment towards the respondent and his daughter and son. Finally, the respondent's daughter lodged a police complaint before the All Women Police Station, Ambur on 1.4.2016 and a CSR was registered. But no action was taken against the appellant. Then the respondent's daughter approached this Court in CrI.O.P.No.10135 of 2016 and as per the direction of this Court, the Ambur Police registered a case against the appellant under Sections 323, 294(b), 506(i) of IPC. Thereafter, the appellant is said to have given more torture to the respondent's daughter through her brother, who is working in the Military service. The appellant also is said to have threatened the daughter of the respondent that unless she marries the appellant's brother, nobody would marry her. But the respondent's daughter refused the said proposal. Thereafter, the appellant's brother also went to the extent of pushing the respondent's daughter from the staircase. The appellant lodged a police complaint and also started gathering support from the ruling party and also threatened the respondent to face dire consequences. Therefore, the

respondent was constrained to file a police complaint and also filed the petition for divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act. It is also stated that the appellant also filed a maintenance case before the Judicial Magistrate No.III, Vellore in M.C.No.1 of 2016. In addition thereto, she also filed a case of domestic violence in D.V.C.No.19 of 2016 against the respondent before the Judicial Magistrate No.III, Vellore and also filed the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

3. The trial Court, taking into account the crucial issue whether the appellant has concealed the subsistence of her first marriage with one Hari while contracting the second marriage with the respondent herein, came to the conclusion, on the evidence of P.Ws.1 to 4, that the appellant/wife has failed to reveal the fact of her first marriage with one Hari before the second marriage and that fact has not been also revealed to the respondent herein. The trial Court further held that when the appellant has admitted that she got married with one Hari at the age of 13, she failed to produce any decree for annulment of the first marriage and also the death certificate of the first

husband, if he is not alive. Therefore, on the ground that the appellant has come to the Court with unclean hands, invoking Section 11 read with Section 5(i) of the Hindu Marriage Act, has declared the marriage that took place between the appellant and the respondent on 01.11.2009 as null and void. The relevant portion of the finding of the trial Court is extracted hereunder:-

“But she herself has admitted that she got married with one Hari before this marriage. As such, she is already a married woman, when she is a married woman, unless she gets a divorce from her first husband, she is not supposed to get marry with any one. Though she has stated that her husband is stated to be dead, for such allegation there is no ptoof before this Court. Even she has not approached any competent court to get an order for declaration of civil death also. As such the presumption is that her first husband is still in existence. While so, when the first marriage is in alive according to law, the marriage that got solemnized in between this petitioner and the respondent is null and void as per Sec.11 of the Hindu Marriage Act. Though this case is being

filed u/s 13(1)(i-a) of Hindu Marriage Act for causing cruelty, this court suo-motu invoking the provision u/s 11 of Hindu Marriage Act. When there is no proof for the death of the first husband of this respondent, by way of invoking sec.11 r/w Sec.5(1) of Hindu Marriage Act and this court hereby declares that the marriage took place in between the petitioner and the respondent on 01.11.2009 as nullity since it contravenes the condition u/s 5(i) of the Hindu Marriage Act.

Finally, from the above said discussion, the marriage that has been held in between this petitioner and the respondent dated 01.11.2009 is hereby declared as null and void and this point is answered accordingly.”

4. The above finding of facts has not been proved to be wrong by the appellant. When the appellant herself has admitted the fact that she got married with one Hari, before marrying the respondent herein, she was already a married woman, therefore, unless she gets a decree of divorce from her first husband, she is not supposed to have married anyone. But when she has pleaded that her first husband died, she has neither produced any death

certificate showing his death nor produced any decree of divorce from the Court to say that she contracted the second marriage after the decree of divorce was granted. When the appellant has come to the Court with unclean hands concealing her first marriage, the trial Court, invoking Section 11 read with Section 5(i) of the Hindu Marriage Act, has rightly declared the marriage that took place between the appellant and the respondent as null and void. Therefore, we are unable to find any infirmity or error in the impugned common order and decree. Accordingly, the civil miscellaneous appeals filed by the appellant are dismissed with costs throughout. Consequently, C.M.P.Nos.22457 & 22480 of 2019 are also dismissed.

Speaking order

Index : yes

(T.R.,J.) (G.C.S., J.)

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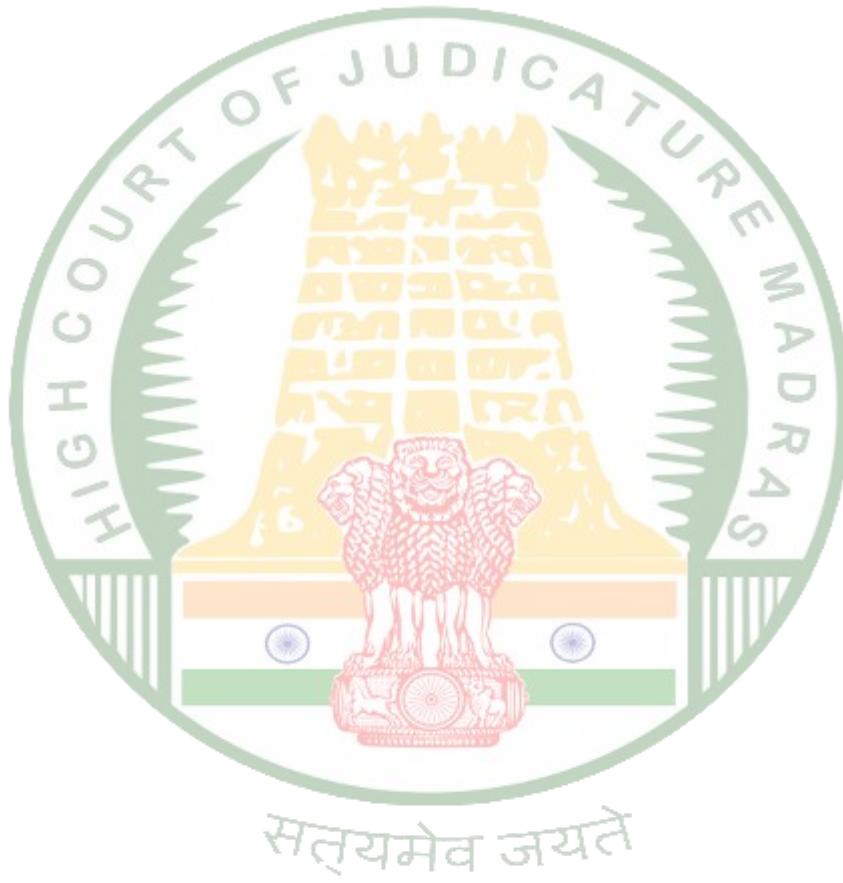
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To

1. The Judge
Family Court

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Vellore



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C.M.A.Nos.3968 & 3975 of 2019

T.RAJA, J.

and

G.CHANDRASEKHARAN, J.

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