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A.No.376 of 2021
in
C.S.No.405 of 2020
P.VELMURUGAN, J.

In the suit filed for declaration and partition, the applicant/4th defendant has filed this application seeking to reject the plaint in C.S.No.405 of 2020 on two grounds, one is the suit is barred by law under Section 5(i) of the Hindu Marriage Act, 1955 and another is proper Court fees has not been paid.

2.The learned counsel for the applicant/4th defendant submitted that the plaintiff married Late Mr.Ram Manohar, who is the father of the 4th defendant, in the year 1998, and she had already got married with another person and her earlier marriage was dissolved only in the year 1999. He further submitted that the plaint averments clearly shows that the earlier marriage was not dissolved either by the Court of law or by any customs prevailed in the community, however, the plaintiff married the father of the applicant and hence, the same is hit by Section 5 (i) of the Hindu Marriage Act, 1955.

3.It is settled proposition of law that while deciding the application under Order VII Rule 11 of C.P.C the Court has to see the averments made



in the plaint, but, not the defence taken by the respondents. A reading of the plaint especially paragraph No.3 of the plaint clearly shows that the plaintiff married the father of the applicant/4th defendant, in the year 1998, whereas, her earlier marriage was dissolved only in the year 1999. Hence, the marriage between the plaintiff and the father of the applicant/4th defendant is not a valid marriage, therefore, she is not entitled for any partition in the suit scheduled property.

4.In the light of the above facts and circumstances, this Court finds that this suit is barred by law, therefore, the plaint is rejected. Accordingly, this application is allowed.

5.As far as the Court fee is concerned, the reasons stated in the affidavit are satisfied, as the same are not the ground for rejection. However, the suit is rejected on the ground of barred by law hit by Section 5(i) of the Hindu Marriage Act, 1955.

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