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W.P.No.21180 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.21180 of 2017

K.Jayathi

.. Petitioner

Vs.

1. The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai - 600 028.

2. The Sub Registrar,
The Sub Registrar Office,
No.37/5, 5th Street, 100 feet Road,
Kodambakkam
Alagiri Nagar (near Vadapalani signal)
Chennai - 24.

3. K.A.Satchidanandam

4. Vanitha

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter in Hindu Marriage Serial No.557/2015, dated 31.08.2015, issued by the 2nd respondent and quash the same and consequently direct the 2nd respondent to cancel the illegal marriage held



W.P.No.21180 of 2017

between the 3rd and 4th respondents registered in Document No.557/2015,

dated 03.08.2015 on the file of the 2nd respondent.

For Petitioner : Mr.Perumbulavil Radhakrishnan

For Respondents 1 & 2 : Mr.K.Tippu Sulthan
Government Advocate

For Respondent 3 : No appearance

For Respondent 4 : Mr.V.Krishnasamy

ORDER

This writ petition has been filed challenging the order of the second respondent dated 31.08.2015, refusing to cancel the marriage registration certificate of the illegal marriage held between the 3rd and 4th respondents and registered as Document No.557/2015, dated 03.08.2015.

2. The case of the petitioner is that the petitioner is the legally wedded wife of the third respondent. The marriage was solemnized between the petitioner and the third respondent on 01.11.1989, as per the Hindu traditions and customs. After the marriage, they lived as husband and wife and the petitioner gave birth to two children, one female and another male.



W.P.No.21180 of 2017

WEB COPY

3. The 4th respondent is the younger sister of the petitioner and at the time of the petitioner's marriage with the 3rd respondent, the 4th respondent was studying and she needed parenting, so the petitioner took care of her younger sister the 4th respondent herein and allowed the 4th respondent to stay with her family.

4. While the 4th respondent was staying in the house of the petitioner she developed relationship with the 3rd respondent, the petitioner's husband and both of them registered their illegal marriage in Document No.557/2015, dated 03.08.2015 by producing false documents and by suppressing the Family Court judgments in H.M.O.P.No.1416 of 2008.

5. It is the contention of the writ petitioner that the 3rd respondent has also filed a divorce petition in H.M.O.P.No.4294 of 2013 before the 1st Additional Family Court, Chennai and the same was dismissed on 22.06.2013. There was also a property dispute between them and a Civil Suit in C.S.No.391 of 2015 was filed before this Court and subsequently the same was transferred to XIX Additional City Civil Court, Chennai and now re-



W.P.No.21180 of 2017

numbered as O.S.No.5701 of 2019 and the same is still pending.

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6. The petitioner after coming to know about the registration of the second marriage of the 3rd with the 4th respondents, she gave a representation to the 2nd respondent to cancel the marriage registration certificate dated 03.08.2015. However, the second respondent issued the impugned letter in Document No.557/2015, dated 31.08.2015 by clarifying that he has no power to cancel a registered marriage. Therefore, this writ petition has been filed seeking a direction to the second respondent to cancel the marriage registration certificate dated 03.08.2015.

7. Despite several adjournments, no counter has been filed by the respondents 1 and 2. The learned counsel appearing for the 4th respondent has also not filed any counter, though sought time for filing counter today, this Court is of the view that the matter is pending from the year 2017 and despite several opportunities have been given, no counter has been filed by the 4th respondent.

8. The learned counsel appearing for the petitioner would submit that



W.P.No.21180 of 2017

the marriage between the 3rd and 4th respondent has been registered suppressing the subsisting marriage between the petitioner and the 3rd respondent and therefore the same is void in the eye of law. When the petitioner gave a representation to the second respondent to cancel the registration, the second respondent simply shirked his responsibility by stating that he has no power to cancel the registration. According to the learned counsel, the very registration of marriage under the Hindu Marriage Act itself is not in accordance with law. Only a valid marriage can be registered as per the Tamil Nadu Registration of Marriage Act, 2009. Without even verifying whether there was a proper marriage performed between the 3rd and 4th respondent and without enquiry whether either of them have spouse living at the time of such marriage registration, the second respondent registered the marriage mechanically merely on the basis of the false declaration given by the parties as if there is no spouse living.

9. The learned counsel appearing for the petitioner also brought to the notice of this Court the divorce petition filed by the 3rd respondent, which was dismissed by the Family Court for default. As long as the marriage between the petitioner and the 3rd respondent is not legally annulled, the



W.P.No.21180 of 2017

relationship as that of husband and wife will continue between them. The learned counsel further submitted that the action of the 4th and 3rd respondent by giving false declaration before the second respondent and getting their illegal marriage registered, if permitted to continue, the same will have serious consequences.

10. Whereas, the learned counsel appearing for the 4th respondent admitted that the marriage between the 3rd and 4th respondent has been registered during the subsistence of the first marriage between the petitioner and the 3rd respondent. It is his contention that the marriage has been solemnized with the consent of the writ petitioner. It is further submitted by the learned counsel that the second respondent has no power to cancel it under the Tamil Nadu Registration of Marriages Act and Rules and at the most the petitioner can work out her remedy before the Family Court and hence seeks dismissal of the writ petition.

11. Whereas, the learned Government Advocate appearing for the respondents 1 and 2 would submit that there is no provision under the Tamil Nadu Registration of Marriage Act, 2009 and the Rules to cancel the



W.P.No.21180 of 2017

registration of marriage and he has also placed reliance on the order passed by a learned Single Judge of this Court in W.P.No.18380 of 2021 dated 24.01.2022 to substantiate his submissions.

12. I have heard the learned counsel on either side and also perused the entire records carefully.

13. It is not disputed that the petitioner and the 4th respondent are sisters. The petitioner married the 3rd respondent in the year 1989 and at the relevant point of time, the 4th respondent was only student and according to the learned counsel appearing for the 4th respondent, the 4th respondent was 15 years old. It is relevant to note that the marriage between the petitioner and the 3rd respondent has been solemnized in the year 1989. It appears that there arose some dispute between the husband and wife which resulted in filing of divorce petitions by the 3rd respondent in H.M.O.P.No.1416 of 2008 and H.M.O.P.No.4294 of 2013 seeking divorce. However the same was dismissed for default. Allowing the matter to get dismissed for default clearly indicate that the above petitions have not been prosecuted diligently by the 3rd respondent. Therefore, the marriage between the petitioner and the 3rd



W.P.No.21180 of 2017

respondent has not been dissolved by the operation of law.

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14. It is relevant to note that the 4th respondent is none other than the younger sister of the petitioner. The 4th respondent is also aware of the fact that the marriage between her elder sister namely the petitioner herein and the 3rd respondent is very much subsisting, when she had developed the alleged relationship with the third respondent. Such being the position, as long as the first marriage between the petitioner and the 3rd respondent is valid and has not been dissolved by way of divorce as per law, contracting second marriage by the 3rd respondent with the 4th respondent is void ab initio.

15. It is relevant to note that as far as the Hindu Marriage is concerned, for a valid Hindu marriage, as per Section 5 of the Hindu Marriage Act, 1955 neither party must have a spouse living at the time of marriage. Admittedly, in this case, the 3rd respondent was having a spouse living at the time of his second marriage. Therefore, the second marriage contracted between the 3rd and 4th respondent is nullity in the eye of law and it is void as per Section 11 of the Hindu Marriage Act. Though, such marriage should be declared as nullity in an appropriate petition before the concerned Family



W.P.No.21180 of 2017

Court under Section 11 of the Hindu Marriage Act. It is the admitted case of both sides that at the time of second marriage of the third respondent, he has a living wife through his first marriage. Therefore, the said second marriage in effect contravenes Section 5 of the Hindu Marriage Act and it is only void. Considering the admitted facts, this Court is of the view that the parties should not be relegated to the Family Court to get the second marriage declared as void.

16. Such view of the matter, the very registration of the second marriage on the basis of false declaration cannot be sustained in law. It is submitted by the learned Government Advocate appearing for the second respondent that there is no provision in the Tamil Nadu Hindu Marriage (Registration) Rules, 1967 to cancel a registered marriage certificate. It is relevant to note that while registering the marriage, Form -I declaration has to be filed by the parties. In Clause 6 of the said Form - I of the Tamil Nadu Hindu Marriage Registration Rules, 1967 makes it clear that one of the declaration is with regard to the marital status before the date of marriage. Further in Clause 10 the name of the person who Solemnizes the marriage has to be given and in Clause 13(ii) they have to declare that the conditions laid



W.P.No.21180 of 2017

down in Section 5 and 7 or 7-A of the Act have been satisfied.

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17. If the 3rd respondent had disclosed the earlier marriage as required in Form-I, the marriage itself would not have been registered as per the Tamil Nadu Hindu Marriage (Registration) Rules, 1969. Therefore, suppressing the earlier marriage, somehow or the other getting the said marriage registered under the Tamil Nadu Hindu Marriage Registration Act, in the eye of law, is not valid. Though the Rules does not explicitly provide for cancellation of registration, it is relevant to note that when the authority who is vested with the power to register the marriage also derive power to cancel the same when such registration itself is made on the basis of fraudulent act or suppression of material facts. Section 21 of the General Clauses Act reads as follows:

"21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.— Where, by any Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or byelaws so issued."

18. When the power is vested with the authority to register a marriage,



W.P.No.21180 of 2017

the authority can also invoke the said power to cancel the same as per Section 21 of the General Clauses Act. Therefore it cannot be said that the impugned registered marriage certificate cannot be cancelled merely due to absence of any Rules in this regard.

19. The judgment relied on by the learned Government Advocate in W.P.No.18380 of 2021, will not be applicable to the facts and circumstances of this case. In the above case, the very registration of the first marriage itself is sought to be cancelled. Only in that context, the learned Single Judge has directed the parties to go before the Family Court. Therefore, the above judgment cannot be applicable to the facts and circumstance of this case. In this case, the very registration of the marriage itself is contrary to the substantial provisions of the Hindu Marriage Act. When the so called marriage itself is void ab initio, in view of contravention of Section 5 of the Hindu Marriage Act, such being the position, the above judgment relied on by the learned Government Advocate will not be applicable to the facts of this case.

20. Though, this Court, in the normal course, would have directed the parties to go before the Family Court and file a petition to declare the marriage



W.P.No.21180 of 2017

as void, it is relevant to note that the very marriage, in this case itself is void from the very inception, therefore again relegating the parties to the Family Court will only lead further delay. Allowing to continue such registration would cause serious impact in the line of successions and also affect the Class I legal heirs. As long as the marriage being void under law, if the certificate remains in the public records, it will lead to serious consequence if the certificate has been used by the 4th respondent to deviate the line of succession, it will affect the Class - I Legal Heirs. Such view of the matter, this Court is of the considered view that the marriage registered Document No.557/2015, dated 03.08.2015 under the Tamil Nadu Hindu Marriage (Registration) Act, has to be canceled, accordingly the second respondent Sub-Registrar is directed to cancel the marriage registration certificate in Document No.557/2015, dated 03.08.2015. To prevent further misuse of the said marriage certificate, necessary endorsement has to be made in the concerned Register indicating the fact that the marriage registered in the Register is not valid according to law and give a certificate copy of the said cancellation to the writ petitioner. With the above observations, this writ petition is allowed. No costs.

07.11.2022



W.P.No.21180 of 2017

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Index: Yes / No

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W.P.No.21180 of 2017

To

WEB COPY

1. The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai - 600 028.
2. The Sub Registrar,
The Sub Registrar Office,
No.37/5, 5th Street, 100 feet Road,
Kodambakkam
Alagiri Nagar (near Vadapalani signal)
Chennai - 24.



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W.P.No.21180 of 2017

N.SATHISH KUMAR, J.

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W.P.No.21180 of 2017

07.11.2022