



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HON'BLE MR JUSTICE SUNDER MOHAN**

C.M.A(MD)Nos.186 & 187 of 2020

C.M.A(MD)No.186 of 2020

Abinaya

... Appellant/Petitioner

.Vs.

B.Yogesh Kumar

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, to set aside the judgment and decree passed in H.M.O.P.No.27 of 2016, on the file of the Family Court, Madurai, dated 11.03.2019 by allow this appeal.

C.M.A(MD)No.187 of 2020

Abinaya

... Appellant/Respondent

.Vs.

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... Respondent/Petitioner



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, to set aside the judgment and decree passed in H.M.O.P.No.377 of 2016, on the file of the Family Court, Madurai, dated 11.03.2019 by allow this appeal.

For Appellant : Mr.H.Thayumanaswamy

For Respondent : No appearance

COMMON JUDGMENT

**DR.G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.**

Mrs.Abinaya, who is the appellant in both the Civil Miscellaneous Appeal, being aggrieved by the dismissal of her petition to declare the marriage registered at Kodambakkam Sub-Registrar Office on 07.12.2015 with the respondent Yogeshkumar as voidable marriage and allowing the petition filed by the respondent for Restitution of Conjugal Rights, is before this Court.

2. The contentions of the appellant before this Court is that she and the respondent were working together in IT Company at Thiruvananthapuram.



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY

On 30.11.2015 at Vadapalani Temple their marriage was solemnized in the presence of friends. On 07.12.2015 the marriage was registered. The appellant, who went to Madurai after that and stayed with her parents. She lodged a complaint at Tallakulam Police Station, Madurai alleging that under threat she was forcibly taken to the Registrar Office and marriage was registered. Hence, petition to declare the marriage voidable.

3. The respondent filed O.P.No.4690 of 2015 before the Family Court, Chennai, later transferred to Family Court, Madurai as against the appellant for restitution of conjugal rights. Whereas, the respondent, in his petition for restitution of conjugal rights, has contended that he and the appellant were in love while they were working together. When the family members of the appellant were engaged in searching alliance for her, to avoid that, she forced the respondent to solemnize the marriage immediately and only on her wish, on 30.11.2015 in the presence of the friends, the marriage was solemnized at Vadapalani Temple. Thereafter, the marriage was registered at the insistence and compulsion of the appellant. The decision to solemnize the marriage and get it registered was taken by the appellant and there is no force or threat. The said decision was forced on the respondent by the appellant to prevent the



C.M.A.(MD) Nos.186 & 187 of 2020

appellant's parents from getting her marry to somebody else against the wish of the appellant.

4. According to the respondent, the marriage was solemnized as per the Hindu Rites and customs at Vadapalani Temple on 30.11.2015 and the marriage was video-graphed and photographed. After the registration of the marriage on 07.12.2015, the appellant took permission from the respondent to meet her parents. Believing her, the respondent permitted the appellant to meet her parents. But due to certain external interference, more particularly, the husband of her sister, she had turn around and has filed a police complaint. Hence, sought for restitution of conjugal rights.

5. The parties have subjected themselves for trial and both parties were tried together by the Family Court, Madurai. The appellant was examined as P.W.1 and 6 documents were marked on her behalf. The respondent was examined as R.W.1 and 5 documents were marked on his behalf.



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY

6. The Court below framed three points for consideration. Primarily, the plea of the appellant that the marriage alleged to have been solemnized on 30.11.2015 followed by its registration on 07.12.2015 whether is voidable marriage. Considering the photographs and CD of Videograph marked as Ex.R2 which were taken during the marriage ceremony and the Registration of marriage is marked as Ex.P4, the trial Court has come to the subjective satisfaction that the photograph does not show any sign of fear or threat in the face of the appellant and the contention of the appellant that she has given consent for the registration due to threat exerted on her appears to be a imaginary and false contention. As the consequence, the trial Court has concluded that the marriage solemnized between the appellant and the respondent on 30.11.2015 and the same was registered on 07.12.2015 cannot be declared as voidable marriage. Contrarily, willful withdrawal from the marital life by the appellant held to be unjustifiable and ordered to join with the respondent. Accordingly, the petition for Restitution of Conjugal Rights was allowed.

7. Therefore, the appellant, who lost her petition for declaring the marriage as voidable and suffer the decree of restitution of conjugal rights, filed these appeals on the ground that the trial Court has not taken note of



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COUNCIL

the fact that the appellant was living alone in the city of Chennai and been under the influence of the respondent and his friends to put her under threat and compelled her to participate in the marriage ceremony and the registration process. The photographs and video-graphs taken cannot be relied upon since they were not proved in the manner known to law through the person who took photographs. The complaint given by the appellant soon after been liberted from the influence and threat of the respondent not been given due consideration by the trial Court and prayed for reversal of the trial Court judgment and allow her petition to declare the marriage as voidable.

8. Heard the learned counsel for the appellant. The respondent has entered appearance through counsel Mr.C.Baskaran, but though the matter was listed twice for final hearing, there is no representation for him.

9. The sequence of event as found from the documents relied by the parties indicates that the marriage was solemnized on 30.11.2015 and the same got registered on 07.12.2015 at Kodambakkam Sub-Registrar Office. Two days thereafter, the appellant has given a complaint before the Tallakulam Police Station, Madurai. Since then the parties are living



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY

separately by making allegation against each other. It is evident from the pleading that the marriage which was solemnized on 30.11.2015 not consummated and under undue influence and threat the marriage alleged to have been solemnized. Neither the parents of the appellant nor the parents of the respondent attended the marriage and none of the presentees to the marriage been examined by the respondent. In the said circumstances, when one of the party to the marriage denies valid consent and no other contrary evidence let in by the respondent through any independent witness relying upon untested photographs and videographs valid consent cannot be refused. The subsequent conduct of the parties is also bound to be noted. In this case, the complaint dated 09.12.2015 lodged by the appellant is significant as an indication that the marriage even if fairly solemnized and registered had not been consummated and given effect due to withdrawal of the appellant from the matrimonial home.

10. Section 12 of the Hindu Marriage Act enumerates the circumstances under which the marriage solemnized can be nullified and one such circumstances is that the consent of the petitioner obtained by force or by fraud, the only condition for resorting this provision is that the petitioner has to approach the Court within one year from the date of force or fraud.



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY

11. In this case, the complaint dated 09.12.2015 clearly indicates that the appellant had no intention to live with the respondent as his wife, immediately on receipt of the notice from the Family Court in the petition filed by the husband for Restitution of Conjugal Rights, she has verified the records and approach the Family Court for declaring the marriage as voidable. This action has been initiated by the appellant within one year and to infer that she has resorted to the remedy soon after the force had ceased to operate. Ex.P2 and P3 the police complaint and the receipt given by the appellant is sufficient to satisfy this Court that the marriage solemnized between the parties on 30.11.2015 was not with due and absolute consent.

12. The petition to declare the marriage as voidable been filed within one month from the date of Registration of the said marriage. That apart, this Court also take judicial note of the fact that the parties never lived as husband and wife though the marriage was solemnized and registered in the year 2015. For the past 7 years separation also warrants interference to the judgment of the Court below.



C.M.A.(MD) Nos.186 & 187 of 2020

WEB COPY

13. Accordingly, the common order passed by the Family Court, Madurai in H.M.O.P.Nos.377/2016 and 27 of 2016, dated 11.03.2019 is set aside. The petition in H.M.O.P.No.27 of 2016 filed by the appellant to declare the marriage as voidable is allowed and the petition in H.M.O.P.No. 377 of 2016 filed by the respondent for restitution of conjugal rights is dismissed. No costs.

[G.J.,J.] [S.M.,J.]
16.12.2022

Index : Yes / No
Internet : Yes / No

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To

The Family Court,
Madurai.



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C.M.A.(MD) Nos.186 & 187 of 2020

DR.G.JAYACHANDRAN, J.
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JUDGMENT MADE IN
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