



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU

AND

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CMA (MD)No.221 of 2016

WEB COPY

V.Arjunan

.. Appellant/
Petitioner

Vs.

C.Seethalakshmi

.. Respondent/
respondent

Prayer : Civil Miscellaneous Appeals are filed under Section 19 of the Hindu Marriage Act, 1955 against the order dated 12.03.2015 made in HMOP No.433 of 2014 on the file of the family Court, Tirunelveli.

For Appellant : Mr.T.Lajapathi Roy

For respondents : No appearance

JUDGMENT

J. NISHA BANU, J.

and

N. ANAND VENKATESH, J.

This appeal has been filed against the judgment of the learned Family Judge, Tirunelveli made in HMOP No.433/2014 dated 12.03.2015.

2.The appellant is the husband and he filed a petition before the Court below on the ground that the very marriage between the appellant and the respondent is null and void since on the date of marriage, the respondent was already married and the said marriage was in subsistence.

3.The Court below, on considering the rival claims, found that the subsisting marriage of the respondent was not dissolved in accordance with law and what was found was only a dissolution deed, which was typed in a Twenty Rupees stamp paper. The Court below instead of focussing its attention as to whether the marriage that took place between the appellant and the respondent was valid in the eye of law, unnecessarily, went into the conduct of the petitioner and ultimately the petition was dismissed on issues, which are irrelevant for the present case.

4. In the considered view of this Court, once the Court below has found that the marriage between the appellant and the respondent

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had taken place even during the subsistence of the marriage. The respondent, that by itself should have been a ground for the Court below to dissolve the marriage under Section 11 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). The said provision makes it very clear that any marriage solemnized shall be null and void if it contravenes any of the conditions specified under Clauses I, IV and V of Section 5 of the Act. A careful reading of Section 5 of the Act shows that the marriage will be valid only if neither party has a spouse living at the time of marriage. In the present case, there was no dispute with regard to the fact that the spouse of the respondent was very much alive and the marriage between the respondent and her spouse was not dissolved in the manner known to law.

5. In view of the same, the marriage between the appellant and the respondent is a nullity. In view of the above discussions, we have no hesitation to interfere with the judgment of the Court below and we hereby declare that the marriage solemnized between the appellant and the respondent is declared to be a nullity and accordingly, their marriage is dissolved. The Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/10/2022

Sub Assistant Registrar(CS)

RR

To

1.The Judge,
Family Court,
Tirunelveli.

2.The VR Section
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-45266[F] dated 16/09/2022)

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