



C.M.S.A.No.47 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.01.2023	Pronounced on 27.02.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.S.A.No.47 of 2021

Anusha Nandhini

... Appellant

Vs.

A.Karthi

... Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 100 of CPC r/w 21(1)9 of Hindu Marriages Act, to set aside the fair and decreetal order in C.M.A.No.12 of 2017 dated 17.07.2019 on the file of the Principal District Judge, Villupuram, confirming the fair and decreetal order in H.M.O.P.No.208 of 2014 dated 19.01.2017, on the file of the 1st Additional Subordinate Judge, Villupuram, and thereby allow the appeal.

For Appellant : Mr.N.Suresh

For Respondent : Mr.K.Selvaraj

J U D G M E N T

This civil miscellaneous second appeal has been filed to set aside the fair and decreetal order in C.M.A.No.12 of 2017 dated 17.07.2019 on the file of the



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Principal District Judge, Villupuram, confirming the fair and decreetal order in H.M.O.P.No.208 of 2014 dated 19.01.2017, on the file of the 1st Additional Subordinate Judge, Villupuram.

2.The unsuccessful wife is the appellant herein. For the sake of convenience, the parties are referred to as their ranking before the Trial Court. The petitioner/wife filed an application under Section 12(1) (c) of Hindu Marriage Act, to declare that the alleged marriage solemnized on 27.03.2014 and the same was registered as Sl.No.115 of 2014 in the office of Joint Sub-Registrar No.II, Tiruvannamalai as "Null and Void".

3.In the petition, it is specifically averred that the petitioner and the respondent were co-students studying in E.S.Engineering College, Villupuram, in the academic year 2010 to 2014. When they were closely moving with each other, it is alleged that the respondent forcibly took the petitioner to the office of the Joint Sub-Registrar No.II, Tiruvannamalai, on 03.04.2014 and registered the marriage under threat and only after seeing the copy of the Certificate of Marriage, she came to know that the respondent has played a fraud on the



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petitioner. Hence, the documents that was registered with the Joint Sub-Registrar No.II, Tiruvannamalai, as if the marriage was solemnized between the parties is under threat and coercion and subsequently, the same is "Null and Void". So is the prayer.

4.According to the petitioner, there is no valid marriage and there was no free consent. There was a police complaint before the All Women Police Station, Tirukovilur, on 27.09.2014. It was lodged by the petitioner/wife that she was under threat by the respondent that if she discloses the marriage to anybody he will throw acid on her face.

5.Before the Trial Court, the respondent/husband filed a counter affidavit. In the counter affidavit, *inter alia*, he denied various allegations and contended that the marriage between the parties was with consent, will and pleasure of both the parties. The marriage was celebrated at Murugar Koil and the marriage between the parties are valid one. The complaint given by the petitioner/wife before the All Women Police Station, Tirukovilur, is a false case.



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6.In the Trial, the petitioner was examined as PW1, Exs.P1 to P4 were marked and on the side of the respondent RW1 was examined and Ex.R1 was marked.

7.After consideration of both oral and documentary evidence, the Trial Court dismissed the H.M.O.P.208 of 2014 so also the appeal filed in C.M.A.No.12 of 2017 by the Principal District Judge, Villupuram. Hence, this C.M.S.A.No.47 of 2021.

8.On 02.06.2021, the following substantial questions of law were framed;

“1.Whether the Courts below were right in concluding that there was a valid marriage solely based on the Certificate of Registration? and

2.Whether the Courts were right in concluding that in the absence of proof of a valid marriage ceremony having been undergone by the spouses, a mere registration would lead credence to the claim of marriage?”



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9.Heard Mr.N.Suresh, the learned counsel for the appellant and Mr.K.Selvaraj, the learned counsel for the respondent and perused the materials available on record.

10(a).It reveals from lower Court records that this C.M.S.A arises out of the order passed in H.M.O.P.No.208 of 2014 before the I Additional Sub-Judge, Villupuram, filed by the petitioner/wife for dissolution of marriage. Another H.M.O.P.No.158 of 2014 filed by the respondent/husband before the Sub-Court, Tiruvannamalai, was dismissed for default on 09.01.2020.

10(b).The sum and substance of the rival contentions of both the parties are that the alleged marriage took place on 27.03.2014 at Murugar Koil, Nallavanpalayam, Tiruvannamalai, by following the Hindu rites or any form of the valid marriage. Subsequently, there was a registration of marriage before the Joint Sub-Registrar No.II, Tiruvannamalai, in Sl.No.115 of 2014 on 27.03.2014.



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10(c).This H.M.O.P was filed to declare that the alleged marriage which was registered before the Joint Sub-Registrar No.II, Tiruvannamalai, as "Null and Void" on the ground that no solemnization of marriage was conducted between the parties and the registration of documents of marriage on 27.03.2014 before the Joint Sub-Registrar No.II, Tiruvannamalai, as "Null and Void", wherein both the Courts below have rejected the same.

11(a).Both the parties are students, who were studying in E.S.Engineering College during the year 2010 to 2014. As they are co-students, there was a close understanding between the parties. It is a specific case of the petitioner/wife, PW1 in the witness box, that she was taken to the Joint Sub-Registrar No.II, Tiruvannamalai, on some other pretext and obtained signature for registration, that how Ex.P1 is came into existence. Subsequently, on 27.09.2014, her parents have lodged a complaint before the All Women Police Station, Tirukovilur. On behalf of the respondent, Ex.R1/Registration of Marriage Certificate was marked. Both the Courts below has negatived the said contention.



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11(b).The plaintiff has specifically alleged that no marriage solemnization was conducted as mentioned by the respondent before registration of the documents. The alleged solemnization of marriage on 27.03.2014 before the Murugar Koil, Tiruvannamalai, is not true when the very factum of marriage itself is denied.

12.This Court is of the considered view that the burden is only on the respondent to prove the factum of marriage. The respondent, who asserted the marriage was performed as per Hindu Customary Rites only and as such, the respondent/husband failed to prove the same and the marriage certificate and its validity is doubtful.

13.It is the basic requirement of the Hindu Marriage, which is alleged to have carried out under the Hindu Rites and Customs, the performance of “Saptapadi” is essential as stated under Section 7 of the Hindu Marriage Act. In respect of Hindu Marriage Register, if one of the parties to the extracts repudiates, it is for the other party to prove the very factum of the marriage



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which was conducted either under Section 7 or Section 7(A) of Hindu Marriage Act.

14. Admittedly, though the respondent stated that there was a solemnization of marriage and there was “Sapdapati”, they failed to examine any Priest/Gurukkal who is said to have performed the marriage.

15. The Hon'ble Division Bench of this Court reported in **2019 (3) CTC 257** held that without proving the mandatory ceremonies as enumerated under Section 7, the Court cannot presume that there was a valid marriage. In another judgment of the Hon'ble Division Bench of this Court reported in **2012 (2) MLJ 530** in the case of **G.Sijala Vs. M.Prabu**, this Court also held that when the customary and essential rite of “Saptabadi” is not established, the alleged marriage is not valid in the eye of law.

16. In view of the above facts and position, I find that both the substantial questions of law have to be answered in affirmative viz., in favour of the petitioner. When there is no valid marriage being solemnized as required under



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the Hindu Marriage Act, as explained in the above decision, both the Courts below have committed an error in concluding that there was a marriage solely based upon the marriage certificate which is legally unsustainable. In the absence of proof of valid marriage ceremony having been underwent by the two persons a mere registration could not make credence to the claim of marriage.

17.Hence, on the above facts and position, I find that the respondent has not let in any valid and positive evidence either oral or documentary to show and demonstrate the purpose of the ceremonies of marriage as contemplated under Section 7 and 7(A) of Hindu Marriage Act.

18.In this regard, the learned counsel for the appellant relied upon the judgment reported in **1995 (2) LW 95 = MHC 453 (Shaji Vs. Gopinath)**, which reads as follows;

“ 6. A perusal of the evidence shows that there was no form of marriage gone through between the plaintiff and the defendant at any time. What all has happened is only the registration of a marriage under



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the provisions of the Hindu Marriage Act. Section 7 of the Hindu Marriage Act provides that a Hindu Marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto and where such rites and ceremonies include the Saptapadi, that is, the taking of seven steps by the Bridegroom and the Bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken.

11. It is a clean from the above provision that there has to be solemnization of the marriage in accordance with the provisions of the Hindu Marriage Act before the same is registered under Section 8 of the said Act. In the present case, the uncontradicted version of the plaintiff in the plaint and the deposition is to the effect that there was no marriage of any form at any time before the registration. According to the evidence, there was only registration of marriage and either before or after the parties did not live as husband and wife.”

19. He further relied upon the another judgment reported in **CDJ 2011**

MHC 6396 (Ms.G.Sijala Vs. M.Prabhu & Another) it reads as follows;-



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“23. According to him, if the marriage had taken place in accordance with Hindu Rites, Customs and Ceremonies, then it is incumbent on the respondent to prove the said rites, customs and ceremonies that had followed. He points out that in order to complete a marriage under the Hindu Rites and Customs, performing of Saptapati (that is taking of seven steps of bridegroom and the bride jointly before the sacred fire) is mandatory and none of the witnesses would state that under which custom the marriage took place and who solemnized the marriage.

24. Further the Priest (Gurukkal) was not examined to speak about the performance of various rites and rituals including saptapadi.”

20.He also relied upon the another judgment reported in **CDJ 2018 MHC 5917 (S.Subbulakshmi @ Sunitha Vs. S.Subramanian @ Saravanan)** it reads as follows;-

“22. In support of the above contentions, the learned counsel for the appellant relied upon the decision in the case of (G.Sijala Vs. M.Prabhu and Another) reported in 2012 (2) MLJ 550 wherein it was



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held that when the appellant/wife denied the solemnisation of alleged marriage by adducing evidence, the burden is on the respondent/husband to prove the contrary. It was further held that Sapthapathi, one of the ceremonies propounded by Hindu religion and contemplated under Section 7 of The Act is mandatory to hold that a marriage between two Hindus is a valid marriage.”

21.He also relied upon the another judgment reported in **CDJ 2019 SC 1283 (Rathnamma & Others Vs. Sujathamma & Others)** it reads as follows;-

“.....there is no assertion regarding solemnisation of the customary ceremonies or the rites or that the parties had performed Saptapadi in the manner contemplated under Section 7 of the Act, therefore, the plaintiff cannot succeed the estate of Hanumanthappa on the basis of a marriage which she has failed to prove.....”

Thus, this Court finds that for a valid Hindu marriage, the ceremonies that has to be performed are enumerated under Sections 7 of Hindu Marriage Act is performance of “Saptapathi” that is the taking of seven steps by the



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Bridegroom and the Bride jointly before the sacred fire becomes complete and binding when the seventh step is taken. In the instant case, the performance of marriage was not proved by any positive evidence.

22. In view of the discussions in the preceding paragraphs, this Court holds that the certificate of registration of marriage could not be a sole basis to determine the validity of Hindu Marriage and mere registration of marriage could not lend credence to the claim of the marriage by one party.

23. In view of the decisions stated supra, this Court holds that in the absence of any positive evidence being placed before the Court regarding the performance of marriage, the allegation that he was subjected for coercion for registration of documents is more probable and hence, I am inclined to answer both the substantial questions of law in affirmative in favour of the appellant herein.



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24. Accordingly, this civil miscellaneous second appeal is allowed. The judgment and decree dated 17.07.2019 passed in C.M.A.No.12 of 2017 on the file of the Principal District Judge, Villupuram, confirming the fair and decretal order dated 19.01.2017 passed in H.M.O.P.No.208 of 2014 on the file of the I Additional Subordinate Judge, Villupuram, is hereby set aside and H.M.O.P.No.208 of 2014 on the file of the I Additional Subordinate Judge, Villupuram, stands allowed. Consequently, the Marriage Certificate in Sl.No.115 of 2014 issued by the Joint Sub-Registrar No.II, Tiruvannamalai, stands cancelled as Null and Void. There shall be no order as to costs.

27.02.2023

Index : Yes/No
Neutral Citations : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Principal District Judge,
Villupuram.
- 2.The 1st Additional Subordinate Judge,
Villupuram.
- 3.The Subordinate Judge,
Tiruvannamalai.



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RMT.TEEKAA RAMAN.J,

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**Pre-delivery Judgment made in
C.M.S.A.No.47 of 2021**

Dated: 27.02.2023