



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP (PD) No. 3355 of 2022

And

C.M.P.No. 16654 of 2022

V.Mahalakshmi

... Petitioner/Respondent

Vs

1. K.Satish

... Respondent/Petitioner

2. J.S.Kannan

... proposed respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the impugned proceeding filed by the respondent herein in H.M.O.P.No. 149 of 2022 before the Family Court, Cuddalore.

For Petitioner : Mr. C.S.K.Sathish

For Respondents : No appearance

**ORDER**

WEB COPY The petitioner herein is the respondent in H.M.O.P.No. 149 of 2022 pending before the Family Court, Cuddalore. The said original petition was filed by the respondent herein/ one K.Satish against the petitioner claiming restitution of conjugal rights by invoking Section 7 of the Hindu Marriage Act.

2. The learned counsel appearing for the revision petitioner after receipt of notice, appears before this Court and gone through the affidavit made in the Petition and thereafter, filed this Petition before this Court by invoking under Article 227 of the Constitution of India, stating that H.M.O.P.No. 149 of 2022 pending on the file of the Family Court is frivolous, vexatious and abuse of process of law and also to protect the petitioner and her right to marry a man of her choice.

3. Notice served to the respondents and the names are printed in the cause list, there is no representation on behalf of the respondents.

4. The learned counsel for the petitioner submits that the revision petitioner / Mahalakshmi was a friend of the respondent and



taking into advantage of the friendship, the respondent herein created fabricated certain document as if the marriage was held between himself and the revision petitioner on 19.07.2019 at Thiruvindhrapuram Temple in the presence of his friends. Further, he claimed that she is his wife and filed the said Petition for restitution of conjugal rights and the same is not maintainable for the reason that no marriage was performed as per the Hindu Law between them. He also contended that no registration of marriage also held as required under the Law and he produced the certificate said to have been issued by Prohithar as if the marriage was conducted, moreover the said certificate is not legally acceptable document. Based on that, the trial Court ought not to have taken the case on file and hence, she filed this Civil Revision Petition to strike off H.M.O.P.No. 149 of 2022 as invalid as well as frivolous proceedings.

5. On perusal of the petition copy enclosed in the typed set of papers reveal that the respondents filed application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights claiming that the revision petitioner herein is his wife. As per the averments in the petition, on 19.07.2019, the marriage was conducted between himself and the revision petitioner. Admittedly, both were Hindu but in the petition



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avermment, he has not stated anything about the rituals conducted in the said marriage. He simply stated that without knowledge of their parents, they conducted marriage on 19.07.2019 with the help of their friends. He also admits in paragraph 2 of the Petition that the marriage was not consummated and immediately after the marriage, they left the place and went to their parents home. So, the said averments made in the Petition clearly indicate that their marriage was not consummated and no ceremonies were performed as required under the Hindu Law. Furthermore the marriage was also not registered as per Section 3 of the Tamilnadu Registration of Marriages Act 2009 & also Section 5 of the Tamilnadu Registration of Marriages Rules, 2009.

6. Section 3 of the Tamil Nadu Registration of Marriages Act, 2009 is as follows:-

“3. Marriages to be compulsorily registered.- Every marriage performed on and from the date of commencement of this Act shall be registered under this Act notwithstanding the fact that the said marriage had been entered in the marriage registers governed by any other personal laws of the parties to the marriage or custom or usage or tradition.”



7. Section 5 of the Hindu Marriage Act, 1955 -

5. Conditions for a Hindu marriage.—*A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—*

(i) neither party has a spouse living at the time of the marriage;

[(ii) at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity



(iii) the bridegroom has completed the age of 2 [twenty-one years] and the bride, the age of 3 [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;”

8. On perusal of the above said provision and Act and rules reveal that every marriage performed between the parties are required to be registered compulsorily but the same is not followed here. During registration of the said marriage, they have to give Form Nos. 1 and 2 to the Registering Officer and the same is also not complied. As per the petition averment, the respondent herein relied only the prohithar certificate relating to their marriage and it is not admissible evidence to prove the valid marriage. The petitioner ought to have mention how the rituals were performed as per Hindu rites. But the petition averments, clearly reveals that no ceremonies were performed as required for Hindu



and abusing the process of law, he initiated proceedings based on invalid documents.

9. In view of the above, this Civil Revision Petition is allowed and this Court is inclined to strike off H.M.O.P.No. 149 of 2022 pending on the file of Family Court, Cuddalore. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.03.2023

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Family Court, Cuddalore.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

T.V.THAMILSELVI, J.



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