



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2023

Pronounced on : 21.12.2023

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP(MD)No.452 of 2023 and

CMP(MD)No.2157 of 2023

1. Pramu
2. Sankaran
3. Packiyalakshmi
4. Ulaganathan
5. Petchiammal

.. Petitioners

Vs.

Saraswathi @ Mari

.. Respondent

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment dated 10.01.2019 passed in C.A.No.49 of 2018 on the file of the II Additional District and Sessions Court, Thoothukudi modifying the order dated 11.04.2018 passed in D.V.O.P.No.7 of 2016 on the file of the Judicial Magistrate Court, Srivaikundam, Thoothukudi District.



ORDER

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This revision is preferred against the Judgment dated 10.01.2019 passed in C.A.No.49 of 2018 on the file of II Additional District and Sessions Court, Thoothukudi modifying the order dated 11.04.2018 passed in D.V.O.P. No.7 of 2016 on the file of the Judicial Magistrate Court, Srivaikundam, Thoothukudi District.

2. According to the revision petitioners, the first petitioner married the respondent on 13.11.2015 as per the Hindu Customs and Rites. They had no children. While so, in the month of May 2016, the respondent left the matrimonial home alleging that the first petitioner and others demanded dowry and harassed her.

3. The respondent filed the petition in D.V.O.P.No.7 of 2016 on the file of the Judicial Magistrate Court, Srivaikundam under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the petitioners who were arrayed as respondents 1 to 5 seeking for protection, return of stridhana property and compensation. She had also sought for maintenance to the tune of Rs.5000/- per month from the first petitioner. The second petitioner is the brother of the first petitioner. The third petitioner is



wife of the second petitioner. The fourth petitioner is the maternal uncle of the first and second petitioners. The fifth petitioner is the wife of the fourth petitioner. After hearing both sides, the learned Judicial Magistrate, on 11.04.2018, partly allowed the petition directing the first petitioner to pay a sum of Rs.3000/- to the respondent towards maintenance. The learned Magistrate also passed the protection order directing the petitioners not to harass the respondent. However the claim for compensation and return of Stridhana property was rejected.

4. Aggrieved by that the petitioners filed the appeal in C.A.No.49 of 2018 on the file II Additional District and Sessions Court, Thoothukudi. It is relevant to note that the respondent did not prefer any appeal against the rejection of the relief towards compensation and return of Stridhana property. The learned Second Additional District and Sessions Judge, Thoothukudi, while confirming the relief of maintenance, also granted the other relief.

5. Aggrieved by this, the present revision is preferred.

6. The petitioners contention is that the respondent married one Manikandan on 26.06.2013. The said marriage was dissolved in the presence



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of elderly members of the family and that no Competent Court granted any decree for divorce. Suppressing the said fact, the respondent married the first petitioner, which is against the provisions of the Hindu Marriage Act. Hence, the first petitioner filed H.M.O.P.No.316 of 2017 before the Sub Court, Tiruchendur against the respondent of the said Manikandan seeking to nullify the marriage dated 13.11.2015. On 09.04.2021, it was allowed declaring the marriage solemnized between the first petitioner and the respondent took place on 13.11.2015 as nullified.

7. According to the petitioners, since the Competent Court passed the decree nullifying the marriage dated 13.11.2015 the petition under Section 12 of the Protection of Women from Domestic Violence Act is not maintainable against the first petitioner and since the marriage between the respondent and another person was in force at the time of filing of the above petition, there was no domestic relationship between the first petitioner and the respondent as stated under Section 2(f) of the Protection of Women from Domestic Violence Act 2005. Moreover, there is a contradiction in the evidence of PW1 to PW3 with regard to the Stridhana property. Hence the Courts below failed to consider the above facts and erroneously ordered in favour of the respondent.



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8. On the other hand, learned counsel appearing for the respondent would submit that on 13.11.2015, the marriage between the first petitioner and respondent was solemnized. At the time of marriage, the family of the respondent gave five sovereigns of gold jewels, Rs.25,000/- in cash and household articles worth about Rs.50,000/- and that, after the marriage, the respondent along with the first petitioner, his mother mukkamal and petitioners 2 and 3 were living together.

9. Thereafter, the petitioners 1 to 3 started demanding five sovereigns of gold and Rs.8,00,000/- for discharging the debt incurred by the first petitioner. She was subjected to harassment by petitioners 1 to 3. The fourth and fifth petitioners supported petitioners 1 to 3 for demanding gold and money from the respondent. Thereafter at the instance of the Police officials, the first petitioner and the respondent were living separately in Tirunelveli. The petitioners again started demanding dowry from the respondent and also assaulted her. Hence, the petitioner was forced to leave the matrimonial home and started working in a Textile shop at Tirunelveli. Since the respondent was unable to maintain herself, she filed DVOP.No.7 of 2016 on the file of the Judicial Magistrate Court, Srivaikundam. Further the learned Judicial



Magistrate ordered for maintenance to a sum of Rs.3000/- per month to be paid by the first petitioner and also directed the petitioners not to harass the respondent. However declined the relief of compensation and return of Stridhana articles. Aggrieved by that, the petitioners preferred an appeal in C.A.No.49 of 2018 on the file of II Additional District and Sessions Court, Thoothukudi, in which, the Appellate Court, considering the averments made in the complaint granted all the reliefs claimed in the petition. The Appellate Court, only after considering the contentions made by the respondent has rightly granted the relief to her. The further contention of the respondent is that her first marriage was never suppressed by her. The above facts were well considered by the first Appellate Court while passing the above impugned order which warrants no interference.

10. Heard both sides and records perused.

11. The marriage between the first petitioner and the respondent is not in dispute. It is also not in dispute that the first petitioner filed HMOP No. 316 of 2017 before the Sub Court, Tiruchendur seeking to nullify the marriage dated 13.11.2015 solemnized between the first petitioner and the respondent. In the meantime, the respondent filed the petition under Section 12 of the



Protection of Women from Domestic Violence Act before the Judicial Magistrate Court, Srivaikundam, Thoothukudi District. Admittedly, in HMOP.No.316 of 2017, the marriage dated 13.11.2015 was nullified during the pendency of DVOP No.7 of 2016. According to the petitioners, the order nullifying the marriage dated 13.11.2015 was passed on the ground that the first marriage of the respondent was not dissolved by any Competent Court, and therefore, the marriage between the first petitioner and respondent was declared as void.

12.Now, the question arise whether the wife can file a complaint under the Domestic Violence Act has come to an end with a decree of divorce ?

13.Admittedly, the marriage between the first petitioner and the respondent was solemnized on 13.11.2015. It is also not in dispute that the marriage between the respondent and one third party was not dissolved by any Competent Court. The undisputed fact is that the order of nullifying the marriage took place between the first petitioner and the respondent was passed only after preferring a complaint by the wife under the Domestic Violence Act before the learned Judicial Magistrate, Srivaikundam, Thoothukudi District. However, the provisions under the DV Act can be invoked only when the



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domestic relationship is in existence. Moreover, the marriage between the first petitioner and the respondent was nullified on the ground that the first marriage of the respondent with a third person was not dissolved. Therefore, once the domestic relationship came to an end after the decree of divorce, the complaint under the Domestic Violence Act could not have proceeded further. As per Section 2 (a) of the Act which defines "aggrieved persons" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. It means that the domestic relationship has to be in the present and not in the past. Therefore, it is apparent that the provisions under the DV Act can be invoked only when the domestic relationship is in existence. Where the domestic relationship ceases, the provisions under the DV Act cannot be invoked. In the present case, a decree of divorce has been passed. Once the domestic relationship came to an end after the decree of divorce the complaint under the Domestic Violence Act cannot be maintained. Moreover, even as per the complaint filed before the learned Judicial Magistrate the respondent herself admitted that she was living with the 1st petitioner separately at Tirunelveli from the year 2016 at the instance of the Police Officials. While so, she had impleaded the relatives, namely the petitioners 2 to 5 who were not living in the shared house. Therefore, the



orders passed in C.A.No.49 of 2018 on the file of the II Additional District and Sessions Court, Thoothukudi, modifying the order dated 11.04.2018 passed in D.V.O.P.No. Of 2016 and the order passed in D.V.O.P.No.7 of 2016 by the learned Judicial Magistrate, Srivaikundam, Thoothukudi is set aside.

14.In the result, this civil revision petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

21.12.2023

adl/vsn
Index:Yes/No
Speaking Order : Yes/No

K.GOVINDARAJAN THILAKAVADI,J.



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adl/vsn

Order MADE IN

C.R.P.(MD) No.452 of 2023
&
C.M.P.(MD)Nos.2157 of 2023

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