



C.R.P.(MD) No.2211 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B. BALAJI

C.R.P.(MD) No.2211 of 2019

Boominathan ... Petitioner

Vs.

Parvin Banu ... Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.07.2019 passed by the learned Principal District Judge, Thoothukudi, in S.M.O.P.No.unnumbered/2019 and direct to number the S.M.O.P

For Petitioner : Mr.S.Muthumalai Raja

For Respondent : No appearance

ORDER

The revision petitioner is the husband, who sought for dissolution of the marriage with the respondent. The revision petitioner claims to be a Hindu and his wife is a Muslim.



C.R.P.(MD) No.2211 of 2019

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2. It is the case of the revision petitioner that he married the respondent on 25.08.2017 and it was a special marriage. The marriage broke down and therefore, the petitioner filed SMOP before the learned Principal District Judge, Thoothukudi, invoking Section 27(1)(d) of the Special Marriage Act, 1954, which is the ground for dissolution of the marriage available to either of the spouses, who alleges cruelty.

3. The learned Principal District Judge, Thoothukudi, has returned the said SMOP requiring the petitioner to file the Marriage Registration Certificate from the Registration Department. The revision petitioner represented the papers stating that the marriage has not been registered and the marriage was only celebrated at a temple in the presence of parents and elders of both the families. Despite such return being complied with specifically stating that the marriage was not registered, the Court below has once again directed the production of the Marriage Registration Certificate. Aggrieved by the same, the revision petitioner has preferred the present revision on the ground that when the marriage was admittedly not registered, the Court below ought not to have insisted on production of the Marriage Certificate; the petitioner and the



C.R.P.(MD) No.2211 of 2019

respondent have been living as husband and wife post their marriage on 25.08.2017 and in order to substantiate the said marriage, the marriage invitation as well as wedding photographs have been filed along with SMOP, which have not been considered by the Courts below; the Court below erred in returning the SMOP and urging these grounds the revision petitioner seeks to set aside the order of return dated 08.07.2019 with a consequential direction to the learned Principal District Judge, Thoothukudi, to number the SMOP.

4. Despite service of notice on the respondent, she has not chosen to enter appearance.

5. I have heard the learned counsel for the petitioner and also perused the records.

6. It is the specific case of the revision petitioner that he has married the respondent, who belongs to a different religion and that the said marriage was celebrated on 25.08.2017 at a temple, in the presence of both the parents and also elders of the respective families. Along with



C.R.P.(MD) No.2211 of 2019

the SMOP petition, the petitioner has also enclosed the wedding invitation and photographs evidencing the marriage celebrations.

7. The Special Marriage Act, 1954 was promulgated to provide a special form of marriage in certain cases and for registration of such marriages and also for divorce. Admittedly the petitioner being a Hindu and respondent being a Muslim, the remedy of the petitioner cannot be sought by taking recourse to the provisions of the Hindu Marriage Act. The petitioner can seek the relief of dissolution of marriage only under the provision of the Special Marriage Act.

8. I have gone through the scheme of the entire enactment, viz., the Special Marriage Act, 1954 and also the various Sections.

9. Section 15 of the Act deals with registration of marriages celebrated in other forms and states that any marriage celebrated, whether before or after the commencement of the Special Marriage Act, other than the marriage solemnized under the Special Marriage Act, 1872, or under this Act, may be registered under this Chapter by the



C.R.P.(MD) No.2211 of 2019

Marriage Officer in the territories to which the Act extends, subject to fulfilment of certain conditions that the ceremony of marriage has been performed between the parties and they have been living together as husband and wife, ever since; neither party has at the time of registration more than one spouse living; neither party is an idiot or a lunatic at the time of registration; the parties have completed the age of 21 years at the time of registration; the parties are not within the degrees of prohibited relationship and the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made for registration of marriage. On a reading of Section 15, it is clear that registration is optional and registration of the marriage can be made even after the ceremony of marriage.

10. Section 4 of the said Act stipulates conditions relating to solemnization of Special Marriages. Section 4 does not mandate registration of a Special Marriage. Section 18 deals with effect of registration of special marriage under this Chapter and it would only set out that when the marriage is registered under the Special Marriage Act,



C.R.P.(MD) No.2211 of 2019

the marriage shall be deemed to be a marriage solemnized under the Act and children born after the date of ceremony of marriage, shall be deemed to be legitimate children of their parents.

11. Section 24 renders certain marriages void. If any of the conditions specified in clauses (a), (b), (c) and (d) of Section 4, are not fulfilled, then as per Section 24, the marriage can be declared as nullity. The other ground on which the marriage would be void under Section 24, is the respondent was impotent at the time of marriage and at the time of institution of the suit. Section 24(2) exempts marriage deemed to be solemnized under the Act within the meaning of Section 18, to be of no effect. If the registration was in contravention of the conditions specified in Clauses (a) to (e) of Section 15, Section 27 sets out the grounds available for divorce.

12. On a conjoint reading of the above relevant provisions, I do not see any provision mandating registration of the marriage before enabling either of the spouse to move an application seeking dissolution of marriage under the provision of the Act. In the instant case, the revision



C.R.P.(MD) No.2211 of 2019

petitioner has clearly put it on record that the marriage was not registered and therefore, the registration certificate cannot be produced. Despite the said statement of the revision petitioner, unfortunately the Court below has once again directed production of the Registration Certificate, which is only an exercise in futility.

13. Even otherwise, it is for the respondent to appear in the SMOP proceedings and contest the claim of the petitioner including the validity of the marriage. *Prima facie*, the revision petitioner has set out in his petition that it is only the provisions of the Special Marriage Act that would apply in view of the inter-religious marriage between the petitioner and the respondent and that apart, he has also produced the marriage invitation and also photographs evidencing the celebration of the marriage. The revision petitioner cannot be rendered without any remedy. He certainly cannot approach the Family Court invoking the provision of the Hindu Marriage Act. Necessarily, he has to get the relief of dissolution of marriage only under the provision of the Special Marriage Act. The Court below clearly fell in error in insisting on the revision petitioner to produce the Registration Certificate of the



C.R.P.(MD) No.2211 of 2019

marriage. The said order is liable to be set aside.

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14. In fine, this Civil Revision Petition is allowed and the learned Principal District Judge, Thoothukudi shall number the SMOP petition, if it otherwise in order, without insisting on the Marriage Registration Certificate. The Registry is directed to return the original SMOP papers to the learned counsel for the revision petitioner to enable him to represent the same before the learned Principal District Judge, Thoothukudi, within a period of four weeks from the date of receipt of original papers from the Registry. The learned Principal District Judge, Thoothukudi, shall also give preference to this SMOP, since it is of the year 2019 and shall endeavour to dispose of the same as expeditiously as possible. No costs.

03.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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C.R.P.(MD) No.2211 of 2019

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To

The Principal District Judge,
Thoothukudi,



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C.R.P.(MD) No.2211 of 2019

P.B. BALAJI, J.

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C.R.P.(MD) No.2211 of 2019

Dated: 03.11.2023