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C.M.A.No.2269 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2269 of 2019

Vaitheeswari

... Appellant

Versus

Samidurai

... Respondent

PRAYER : Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act against the Fair and Decreetal Order passed in F.C.H.M.O.P.No.126 of 2017 dated 23.01.2019 on the file of the Family Court at Ariyalur, Ariyalur District.

For Appellant : Mr.R.Jayaprakash

For Respondent : Mr.C.Prakasam

JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.,)



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This Civil Miscellaneous Appeal is preferred against the Order passed in H.M.O.P.No.126 of 2017 on the file of the Family Court, Ariyalur.

2. The appellant herein filed the above said H.M.O.P., under Section 13(1)(i-a) of Hindu Marriage Act, 1955, for grant of an order of divorce on the ground of cruelty.

3. The Family Court did not accept the contentions raised by the petitioner/wife and chose to dismiss the petition. Aggrieved the petitioner/wife has preferred this appeal.

4. The facts led to the filing of the Original Petition by the wife is set out in brief:

The marriage between the petitioner/wife and the respondent/husband was solemnised on 16.09.2013 as per Hindu rites and customs, at the residence of the respondent situate at Aadhanur. After marriage, for two years, the respondent was living along with the petitioner happily. The respondent used to come to his house during night under intoxication and he would assault the petitioner/wife blindly. Without disclosing the 1st marriage, the respondent/husband got married

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the petitioner for the second time. As the respondent wants to reunite with the 1st wife, the petitioner was beaten up by the respondent/husband and thereby caused cruelty. The petitioner without informing the respondent, went to Tiruppur on 07.10.2017. On 10.10.2017, the respondent lodged a complaint about missing of the petitioner/wife before the Tuthur Police Station. Based on the said complaint, on 23.10.2017, the petitioner was produced by the police before the Ariyalur Judicial Magistrate No.II and at her instance, she was sent along with her parents and the case was closed. On 24.10.2017, a talk was held to reunite the petitioner with the respondent, the respondent told that he cannot stop drinking and therefore petitioner states that there is no chance for reunion. In order to annul the marriage held between the petitioner and the respondent, this petition was filed.

5. The counter details are stated in brief:

In fact, the marriage between the petitioner and the respondent held at Aadhanur Mariamman Temple on 08.07.2012. At the time of marriage, either gold jewels or Sridhana articles were not presented by the parents of the petitioner/wife. As the parents of the petitioner(wife) demanded him to part with his property, his father executed a document resembling sale deed on 04.07.2012 without any consideration. The

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said property is still in possession and enjoyment of the respondent/husband family members. His 1st wife is none other than his sister's daughter. As per the village custom, the said marriage was annulled and at present she married another person and living at Tiruppur. This fact is known to the petitioner and her family members. The respondent is ready to reunite with the petitioner.

6. Heard Mr.R.Jayaprakash, learned counsel appearing for the appellant/wife and Mr.C.Prakasam, learned counsel appearing for the respondent/husband.

7. At trial, the appellant / wife has examined herself as PW1 and her father Arjunan was examined as PW2 and 5 documents were marked through PW1. Marriage invitation is Ex.P1. Her school transfer certificate (copy) is Ex.P4. On the respondent side respondent has examined himself as RW1 and one Pounraj who was the Panchayat President of Pungankuli Village was examined as RW2 and two documents were marked through RW1.

8. It has come on record through the evidence of PW1/Vaitheeswari(petitioner) that the marriage between herself and the



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respondent was held on 16.09.2013 as per Hindu Rites and Customs in the presence of relatives at the respondent's Aadhanur residence. It is her further evidence that they lived happily as husband and wife for two years and thereafter, it was his routine affair to consume alcohol and he would blindly assault her. She would further state that during the said period when she question him about this, she was beaten up by him. The state of poverty of her family was taken advantage and the 1st marriage details were hidden by him and he got married her. She came to know that no order of divorce was granted in respect of 1st marriage of the respondent/husband. Due to the acts of cruelty, she has filed the petition for divorce.

9. Her father-PW2 Arjunan would state that the marriage of the petitioner and the respondent was held at his residence. Regarding acts of cruelty, he has also spoken about the acts of cruelty committed by the respondent on the petitioner/wife.

10. Though the factum of marriage was admitted by the respondent/husband, the alleged acts of cruelty was totally denied by the respondent.



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11. The date of marriage stated by the petitioner is not accepted by the respondent/husband. Further, from the evidence of PW2, who is none other than the father of the petitioner (Arjunan), it is made clear that the marriage of the petitioner with the respondent is the 2nd marriage for the respondent/husband. It is also evident that originally the marriage between the respondent and his sister's daughter was held long before and due to misunderstanding, they got separated, would go to show that the marriage between the respondent and his sister's daughter is still subsisting. On the date of marriage, the respondent was not a bachelor, which is in clear violation of Section 5(i) of the Hindu Marriage Act. It is relevant to refer to the provisions of Sections 5 and 11 of the Hindu Marriage Act.

"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



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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 [twenty-one years] and the bride, the age of [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;

11. Void marriages.—*Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 2 [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.*

12. Section 11 in terms lay-down that non-fulfillment of any one of the conditions mentioned in Section 5, renders a marriage solemnised after the commencement of the Act, null and void from its inception and

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either party to such marriage can obtain decree of nullity from the Court.

Therefore, a hindu husband cannot, after the Act came into force, marry another wife as long as his previous marriage is subsisting.

13. The testimony of RW1 and PW2 (father of the petitioner/wife), the respondent had not obtained decree of divorce before entering into the second union. Therefore, as the marriage was held in defiance to Section 5 of the Hindu Marriage Act, we are of the firm view that once the marriage is covered by Section 11, in this case, the marriage was held in defiance to clause-1 of Section 5 of Hindu Marriage Act. Therefore, we have no hesitation to hold that the marriage is *void ipso jure*, i.e., void from the very inception. The effect is that the marriage has to be ignored as not existing in law. Our views are fortified by the observations of the Apex Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Another* reported in (1988) 1 SCC 530. The relevant portion is extracted as follows:

"7.Lastly it was urged that the appellant was not informed about the respondent's marriage with Lilabai when she married the respondent who treated her as his wife, and, therefore, her prayer for maintenance should be allowed. There is no merit in this point either. The appellant cannot rely on the principle of



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estoppel so as to defeat the provisions of the Act. So far as the respondent treating her as his wife is concerned, it is again of no avail as the issue has to be settled under the law. It is the intention of the legislature which is relevant and not the attitude of the party.

8. We, therefore, hold that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code."

14. Based on the aforesaid discussions, we are to conclude that the marriage held between the appellant/wife and the respondent/husband is one covered by Section 11 of the Hindu Marriage Act which is *void ipso jure*. Sequel to this, considering the nature of marriage it has been ignored as not existing in law at all.

15. Accordingly, this Civil Miscellaneous Appeal stands allowed and the order of the Family Court, Ariyalur, granted in F.C.H.M.O.P.No.126 of 2017 dated 23.01.2019 stands set aside and the marriage of the appellant/wife and the respondent/husband is declared as null and void. There is no order as to costs.



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(J.N.B. J.,) (R.K.M.J.,)
04.09.2024

Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case :Yes / No
ssn

To

The Family Court,
Ariyalur District.

J.NISHA BANU, J.,
and
R.KALAIMATHI, J.,

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