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C.M.A.No.2445 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2445 of 2021

and

C.M.P.No.13929 of 2021

Celin @ Martharekulin

... Appellant

Vs.

1. Baskar

2. Dayalan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act to set aside the Judgment and Decree dated 27.04.2021 made in Divorce O.P.No.97 of 2014 on the file of the Principal District Court, Villupuram.

For Appellant : Mr.P.Dinesh Kumar

For Respondents : Mr.S.Kaithamalai Kumaran

JUDGMENT

This appeal has been filed by the wife, aggrieved by the fair and decreetal order passed by the Principal District Court, Villupuram in Divorce O.P.No.97 of 2014. Under the impugned fair and decreetal order passed in Divorce O.P.No.97 of 2014, the O.P. filed by the respondent / husband to declare the alleged marriage between him and the appellant as



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null and void, has been allowed. Admittedly, both the appellant and the first respondent are Christians. The second respondent is the cousin of the appellant who is said to have solemnized the marriage between the appellant and the first respondent.

2. Before the Principal District Court, Villupuram in divorce O.P.No.97 of 2014, the first respondent (husband) has categorically disputed the existence of marriage between him and the appellant.

3. Under the impugned order while allowing O.P.No.97 of 2014, the Principal District Court, Villupuram has given the following reasons for allowing the petition:

a) The second respondent is not a competent person to solemnize the marriage between the appellant and the first respondent as per the provisions of Section 5 of the Indian Christian Marriage Act, 1872;

b) The certificate issued by the Parish Priest of St.Michael's Church (Ex.P2) confirms that there was no valid marriage between the appellant and the first respondent. No notice or publication of such notice was given by the appellant for the intended marriage with the first respondent as



statutorily required under Sections 12 and 13 of the Indian Christian Marriage Act, 1872. The procedures contemplated for registration of marriage under Sections 27 and 34 of the Indian Christian Marriage Act, 1872 have not been adhered to. Admittedly, the second respondent, who is alleged to have solemnized the marriage between the appellant and the first respondent, is not a competent person as per Section 5 of the Indian Christian Marriage Act, 1872.

4. The learned Principal District Judge, under the impugned order has considered the relevant Sections of the Indian Christian Marriage Act, 1872 viz., Sections 5, 12, 13, 27 and 34 and has rightly come to a conclusion that the second respondent is not a competent person to solemnize the alleged marriage between the appellant and the first respondent and the learned Principal District Judge has also given due consideration to the certificate issued by the Parish Priest of St.Michael's Church, who is a competent person to solemnize christian marriages, who has categorically confirmed that there was no valid marriage between the appellant and the first respondent for coming to the conclusion that there was no valid marriage between the appellant and the first respondent.



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5. Learned counsel for the appellant relied upon the decision of the learned Single Judge of this Court in the case of ***Kennedy Sigamani and 3 Others vs. Kiruba Gnanaseeli Prema and Another*** reported in **2000 (1) LW 878** in support of his contention that despite the irregularities in the solemnization of the marriage, Courts are having the power to ignore those irregularities and declare the marriage valid. However, after giving due consideration to the decision relied upon by the learned counsel for the appellant, this Court is of the considered view that the facts of the said case is different from the facts of the case on hand. In the decision relied upon by the learned counsel for the appellant, the husband had admitted to the fact that he had placed the bible in front of the wife for the purpose of solemnization of the marriage. But in the case on hand, there is no admission made by the first respondent with regard to the existence of a valid marriage between him and the appellant. Therefore, the decision relied upon by the learned counsel for the appellant, referred to supra, has no applicability to the facts of the case on hand.



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6. For the foregoing reasons, since the learned Principal District Judge, under the impugned order has rightly allowed the petition filed by the husband, after giving due consideration to the relevant Sections of the Indian Christian Marriage Act, 1872 as well as to the evidence available on record, this Court does not find any infirmity in the findings of the learned Principal District Judge under the impugned order. Hence, there is no merit in this appeal. Accordingly, this appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

23.04.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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To

1. The Principal District Court, Villupuram.
2. The Section officer, Record Section, High Court of Madras.

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