



C.M.A.No.2649 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.No.2649 of 2024

R.Selvakumari ... Appellant

-VS-

R.Rajkumar ... Respondent

PRAYER : Appeal against the order and decree, dated 22.08.2024, passed in H.M.O.P.No.1855 of 2019, on the file of V Additional Family Court, Chennai.

For Appellant : Ms.R.Selvakumari,
Party-in-Person.

For Respondent : Mr.M.L.Joseph

JUDGMENT

(By Dr.G.Jayachandran,J.)

This Civil Miscellaneous Appeal is filed by the wife, being aggrieved by the order and decree, dated 22.08.2024, passed in H.M.O.P.No.1855 of 2019, by V Additional Family Court, Chennai.



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2. The husband/respondent herein filed a petition under Section 13 (1) (i-a) of the Hindu Marriage Act to dissolve the marriage between him and the respondent/appellant herein, which was solemnised on 20.09.2010 at Chennai. According to him, the marriage between him and the respondent was solemnised as per the Hindu customs and rites. They were blessed with a girl child, by name, Gayanthika Varani on 25.09.2012 at Chennai. It was a love marriage without the consent of the parents of either party. The respondent informed the petitioner that she was married to one Raja and has begotten two children through the first marriage and the said marriage was legally dissolved. The petitioner believed that he was giving a life to a destitute widow. After marriage, the attitude of the respondent changed and she was quarrelling with the petitioner for all and sundry. She has given wrong information about her past life, including the dissolution of her earlier marriage.

3. The said petition was contested by the respondent/appellant herein, stating that the earlier marriage alleged in the petition was a child marriage, while she was 16 years old. Under threat, the said Raja married her and she gave birth to a child on 01.05.2004. In the Tsunami disaster, the child died and a sum of Rs.2.00 lakhs was given by the Government, as compensation, which was received by her first husband - Raja. Second child was born on 27.12.2005. Her first husband deserted her and his whereabouts



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are not known. In the said circumstances, she came in contact with the petitioner. The petitioner was informed of her past life and only with full knowledge, the petitioner married her. He declared that her past marriage can be dissolved at any time. Her first husband, who was not with her for a long time, returned from Singapore and, thereafter, she legally dissolved the marriage. A sum of Rs.1.00 lakh was given by him from out of the compensation given by the Government for the death of the child. With that money, she purchased land for the benefit of the second child. She gave birth to a child on 25.09.2012 and she was happily living with the petitioner till 2014. Only on the intervention of the family members of the petitioner, the petitioner got dissociated with her and threatened to divorce her. He also misbehaved with the child and assaulted her. In this connection, a police complaint was lodged and registered in C.S.R.No.253 of 2016. The parties mounted the witness box and were examined as P.W.1 and R.W.1. In the petition, the appellant herein marked 7 documents and the respondent marked 12 documents.

4. The Family Court found that the marriage between the petitioner and the respondent, which was solemnised on 20.09.2010, was hit by Section 5 (i) of the Hindu Marriage Act, since the earlier marriage of the respondent with one Raja was legally dissolved only on 05.08.2011. Under such circumstances, the Family Court modified the relief and declared the



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marriage, solemnised between the petitioner and the respondent on 20.09.2010, as null and void.

5. The present appeal is filed with a specific averment that the respondent herein has wilfully suppressed the fact that earlier he filed a petition for nullity of marriage on the same ground and withdrew it and further knowing fully well that the earlier marriage got dissolved, he continued to live with the appellant and gave birth to a child subsequent to the dissolution of the earlier marriage, and that the Family Court has modified the relief and declared the marriage as null and void without proper appreciation of the pleadings.

6. This Court, on perusing the pleadings and evidence, finds that it is true that the appellant had subsisting marriage with one Raja, when she married the respondent on 20.09.2010, which was duly registered on 16.10.2010. However, her first marriage got dissolved on 05.08.2011 and, even thereafter, the appellant and the respondent were continuously living as wife and husband. It is also admitted by the respondent himself that Family Card, Aadhaar Card and Birth Certificate of the child show that they both are living as husband and wife for a long time. In such circumstances, the Family Court, while considering the petition under Section 13 (1) (i-a) of the Hindu Marriage Act, had not analysed the evidence to ascertain whether there was any cruelty caused by the appellant, warranting dissolution of the marriage.



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7. The modification of the relief by the Family Court is an error apparent on the face of the record, since the relationship between the petitioner and the respondent as husband and wife continued even after dissolution of the first marriage and the fact of giving birth to a child has legalised their relationship as husband and wife.

8. Hence, this Civil Miscellaneous Appeal is allowed and the order of the Family Court is set aside. The matter is remanded back to the Family Court for fresh consideration. If the parties want to adduce additional evidence, they are permitted to do so. The Family Court shall dispose of H.M.O.P.No.1855 of 2019 within a period of six months. No costs. Consequently, the connected C.M.P.No.21176 of 2024 is closed.

(DR.G.J.,J.) (M.S.K.,J.)
17.09.2025

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To

V Additional Family Court,
Chennai.

DR.G.JAYACHANDRAN,J.
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