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C.M.A.(MD)NO.606 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

C.M.A.(MD)No.606 of 2023

Monika

... Appellant / Respondent

Vs.

Sathish Kumar

... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the fair and decretal order passed in H.M.O.P.No.43 of 2022 dated 12.04.2023 on the file of the Family Court, Thanjavur and allow this civil miscellaneous appeal.

For Appellant : Mr.N.Balakrishnan

For Respondents : Mr.S.Sathyachidambaram

* * *

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.



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2. Sathish Kumar, respondent herein filed H.M.O.P.No.43 of 2022 on the file of the Family Court, Thanjavur seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The case of the respondent herein is that he got married to the appellant herein on 17.01.2022 at V.P.S. Devi Marriage Hall at Sikkal as per the Hindu rites and customs and that it was duly registered on the file of the SRO, Nagapattinam on 19.01.2022. He further alleged that few dates later, the appellant left the matrimonial home and that since it was an inter-caste marriage, the appellant herein got considerable and coercive pressure on him. The matter was taken to the local police station who advised the parties to resort to civil remedy. He therefore filed the said petition seeking the relief. The appellant herein filed counter controverting all the assertions made in the petition. The respondent herein examined himself as P.W.1 and marked Ex.P.1 to Ex.P.8. The appellant examined herself as R.W.1 and the Manager of the said wedding hall was examined as R.W.2. Ex.R.1 was marked. As many as four documents were marked as court witnesses. The Court below after considering the evidence on record, allowed the OP as prayed for on 12.04.2023. Questioning the same, this appeal came to be filed.



3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and he called upon this Court to set aside the impugned order.

4. Relying on the decision of the Hon'ble Supreme Court reported in **2024 (3) CTC 551 (Dolly Rani V. Manish Kumar Chanchal)**, the learned counsel submitted that the marriage has not been proved and that therefore, the impugned order of the Court below has to be set aside.

5. Per contra, the learned counsel appearing for the respondent submitted that the respondent by marking the Registration Certificate dated 19.01.2022 has proved the marriage solemnised between the parties. He drew our attention to wedding invitation card and other photographs. The photographs have been marked as Ex.P.6 series. He pointed out that the impugned order is well reasoned and it does not call for interference.

6. We carefully considered the rival contentions and went through the materials on record.



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7. It is necessary to point out at the very outset, the marriage took place. Even according to the respondent, the marriage was not a civil marriage. The claim of the respondent was that the marriage took place between the parties as per Hindu rites and customs on 17.01.2022 at V.P.S. Devi Wedding Hall at Sikkal and that it was subsequently registered on 19.01.2022.

8. The Hon'ble Supreme Court in the recent decision reported in **2024 (3) CTC 551 (Dolly Rani V. Manish Kumar Chanchal)** had categorically held as follows:-

“ **19.** Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case. But if there has been no marriage in accordance with



Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a “Hindu marriage” in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all. ”



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9. Thus, the respondent ought to have independently established the factum of marriage. In this case, except P.W.1, no other individual was examined. Even according to the respondent the marriage was solemnised, not even a single witness was examined. We come to the irresistible conclusion that the marriage has not been proved for granting the relief of restitution of conjugal rights. Proof of marriage is imperative. Since this aspect has not been proved, we are constrained to set aside the impugned order. The impugned order is set aside. This civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)

9th January 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

1. The Judge,
Family Court,
Thanjavur.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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