



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 97 of 2020

S.Logidoss

..Appellant(s)

Vs

S.Kasturi

..Respondent(s)

PRAYER: Appeal filed under Section 96 (1) of the Code of Civil Procedure and Section 19 (1) of the FC Act to set aside the decree and judgment dated 24-10-2019 in OS No.250 of 2018 on the file of the V Additional Family Court, Chennai and allow the Appeal and decree the suit as prayed for.

For Appellant(s): Mr.N.Karthikeyan

For Respondent(s): Ms.Sweety for Mrs.A.Vinupradha

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The plaintiff in O.S.No.250 of 2018, on the file of the V Additional Family Court, Chennai, aggrieved by the judgment and decree dated 24.10.2019, by which judgment the suit was dismissed has filed the present appeal.



2.The said suit in OS No.250 of 2018 had been filed under Sections 5(i) and 11 of the Hindu Marriage Act, 1955 seeking a judgment and decree to declare that the marriage solemnised on 30.10.2017 between the appellant herein/plaintiff and the respondent/defendant as null and void.

3.It is the case of the appellant that he had earlier married another lady on 31.08.2011 and had obtained a decree of divorce by mutual consent on 09.06.2013 in FCOP No.4141 of 2012. Thereafter, the appellant and the respondent were married on 30.10.2017. It was contended that the respondent had held out that she was also a divorcee. However, it came to light that after the marriage, the respondent was frequently going over to the Family Court at Poonamallee and on verification, the appellant came to know that the respondent had filed HMOP No.325 of 2017, before the Sub Court, Poonamallee, seeking a decree of divorce from her earlier husband. The decree of divorce was granted on 09.02.2018 after the marriage between the appellant and the respondent was solemnised on 30.10.2017. It is contended that on the date of the marriage 30.10.2017, the respondent had a spouse living and therefore, the marriage solemnised on 30.10.2017 was void and under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955, the suit in OS No.250 of 2018 had been filed by the appellant.



4. In her written statement, the respondent claimed that her earlier marriage had been dissolved by the Sub Court at Poonamallee in HMOP No.325 of 2017, but had not given the specific date of such judgment dissolving the marriage. She had raised other allegations as against the appellant which are not relevant to decide the appeal now.

5. During trial, on the side of the appellant PW1 was examined and Exs.A1 to A10 were marked. On the side of the respondent, DW1 was examined, but no document was marked.

6. The Trial Judge however held that the appellant had married the respondent with knowledge that her petition seeking dissolution of her earlier marriage was pending and that therefore, the marriage was consensual and therefore, dismissed the suit. Questioning the said reasoning, the plaintiff is in appeal before this Court.

7. Heard the learned counsel for the appellant and the respondent.

8. The only point which arises for consideration is whether on the date of the marriage, the earlier marriage was subsisting and one of the parties had a spouse living, and the marriage can be declared as null and void under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955.



9. The facts are not in dispute. The marriage between the appellant and the respondent was solemnised on 30.10.2017 at Chennai. The appellant was a divorcee and vide judgment dated 09.06.2013, he was granted the decree of divorce. The respondent obtained divorce from her earlier husband in HMOP No.325 of 2017, dated 09.02.2018, which was marked as Ex.A7. There cannot be any denial of this particular fact or that the date of decree was not 09.02.2018. Ex.A2 is the copy of the marriage receipt for the Marriage Hall at Arulmigu Sakthi Vinayagar Thirukovil in K.K.Nagar, Chennai and it is dated 28.06.2017. It had been very specifically stated that the marriage date is 30.10.2017. The marriage invitation was marked as Ex.A3 and the date of the marriage is 30.10.2017.

10. It is thus seen that the following facts can neither be denied nor disputed.

a) The date of the marriage between the appellant and the respondent was 30.10.2017 (Exs.A2 & A3)

b) The date of dissolution of marriage of the respondent with her first husband was 09.02.2018.(Ex.A7). It is thus seen that on 30.10.2017, when the appellant and the respondent were married, the respondent had a spouse living.

11. Section 5(i) of the Hindu Marriage Act, 1955 is as follows:



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.

12. Section 11 of the Hindu Marriage Act, 1955 is as follows:

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 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.

13. The fact speaks for itself. The Trial Judge had misdirected himself by holding that the appellant knew about the subsistence of the marriage and still had married and therefore, the marriage could be termed as a valid marriage. That reasoning is against law. A marriage solemnised when a spouse is living is void under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955. We would therefore interfere with the judgment and decree of the Trial Court, dated 24.10.2019, passed in OS No.250 of 2018 by the V Additional Family Court, Chennai and set aside the same.



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AS No. 97 of 2



C.V.KARTHIKEYAN, J.

**AND
K.RAJASEKAR, J.**

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14.The appeal stands allowed. The marriage between the appellant and the respondent solemnised on 30.10.2017 is declared as void under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955. No costs. Consequently, connected miscellaneous petition, if any, is also closed.

**(C.V.K.,J.) (K.R.S.,J.)
20-04-2026**

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To
The V Additional Family Court, Chennai.

AS No. 97 of 2020