

CMSA (MD) No.05 of 2009 and C.R.P(MD) No.1481 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 03.02.2021

Pronounced on: 25.02.2021

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.S.A(MD)No.05 of 2009
and C.R.P(NPD) (MD)No.1481 of 2012

In C.M.S.A.(MD)No. 5 of 2009:

P.Sivakumar ... Appellant/Appellant/Petitioner

-vs-

S.Beula ... Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28(1) of Hindu Marriage Act, 1995 r/w Section 100 of Civil Procedure Code against the judgment and decree dated 25.07.2008 made in A.S.No.3 of 2007 on the file of the District Judge, Kanyakumar at Nagercoil confirming the decree and judgment dated 10.11.2006 made in H.M.O.P.No.20 of 2005 on the file of the First Additional District Judge Nagercoil.

For Appellant : Mrs.N.Krishnaveni
for Mr.P.Thiyagarajan
For Respondent : Mr.J.John Jeyakumar

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In C.R.P(NPD)(MD)No.1481 of 2012:

P.Sivakumar ... Petitioner/Appellant/Petitioner/Respondent

-VS-

S.Beula ...Respondent/Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 24.02.2011 made in C.M.A.No.8 of 2009 on the file of the District Judge, Kanyakumari at Nagercoil confirming the fair and decretal order dated 30.12.2008 in I.A.No.190 of 2008 in H.M.O.P.No. 13 of 2007 on the file of the Principal Subordinate Judge, Nagercoil.

For Petitioner : Mrs.N.Krishnaveni
for Mr.P.Thiyagarajan

For Respondent : Mr.J.John Jeyakumar

COMMON JUDGMENT

This Civil Miscellaneous Second Appeal arises out of the proceedings under Section 12 of the Hindu Marriage Act launched by the husband seeking a declaration that the marriage between him and the respondent held on 04.12.2003 is null and void and for costs.

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2. According to the appellant, the father of the respondent had approached the father of the appellant in July 2003 and had negotiated for marriage between the appellant and the respondent. During the entire negotiation, the father of the respondent had represented that he is a Hindu and the respondent is also a Hindu. Betrothal ceremony was conducted on 31.08.2003 and the marriage also took place on 04.12.2003. After marriage, spouses lived together at Velayanvilai till 11.12.2003. Since the appellant was working at Chennai the spouses settled down permanently at No.15, Venkateswara Street, Tambaram West, from 12.12.2003. In the course of the said living at Chennai, to his surprise, the appellant found that the respondent was not living as a Hindu and she was adopting Christian faith. On suspicion, the appellant made enquiries and discovered that the respondent and her family were Christians and they misrepresented their religion to the respondent and had obtained his consent by practising fraud. It was also contended that school records of the respondent showed that she was a Christian and she had also obtained Community Certificate showing that she was a Christian.

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3. In the interregnum, it appears that there were certain complaints made to the Police regarding demand of dowry etc. These allegations are not very material for the purpose of this appeal as the decree of nullity is sought for by the appellant on the ground that consent of the appellant was obtained by suppression of material fact namely, the religion of the respondent. Contending that a Hindu marriage could be held or performed only among two Hindus, the appellant would contend that the marriage performed on 04.12.2003 between the Hindu and non-Hindu as per Hindu rites is null and void.

4. This claim of the appellant was resisted by the respondent contending that she and her family were always Hindus. As regards the entries in the school records, it was the contention of the respondent that they were made by mistake as the father of the respondent did not accompany her for admitting her in school. It was also claimed that the marriage of the father of the respondent itself was conducted as a Hindu marriage in a Temple and therefore the claim of the appellant that the respondent was not a Hindu is false to the knowledge of the appellant. It is her further contention that the application itself is motivated in order to wriggle out of the consequences of the complaint lodged by the

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respondent against the appellant and his family for demanding dowry and other matrimonial offences.

5. At trial, the appellant was examined as P.W.1 and other witnesses were examined as P.W.2 to P.W.5. The respondent was examined as R.W.1 and her father was examined as R.W.5 and other witnesses were examined as R.W.2 to R.W.4. Exts.P.1 to P.24 were marked on the side of the appellant and Exts.R1 to R.11 were marked on the side of the respondent.

6. The learned I Additional Subordinate Judge, Nagercoil, who heard H.M.O.P.20 of 2005, on consideration of the evidence, concluded that the appellant has not established his claim that the respondent had misrepresented regarding her religion at the time of marriage beyond reasonable doubt and therefore, he is not entitled to a decree of nullity.

7. Aggrieved, the appellant/husband had filed an appeal in A.S.No.3 of 2007. The learned District Judge, Kanyakumari at Nagercoil, on a re-appreciation of the evidence, concurred with the findings of the Trial Court and held that it has

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not been proved that there was violation of Sections 5 and 12(1)(c) of the Hindu Marriage Act by the respondent or by her family which would entitle the appellant to get a decree for nullity of the marriage. On the said conclusion, the learned District Judge dismissed the appeal confirming the judgment and decree of the trial court. Hence, this Civil Miscellaneous Second Appeal.

8. Notice of motion was ordered in the appeal. After hearing the learned counsel for the parties, I had framed the following questions of law on 08.01.2021:

- (i) Whether the courts below were right in accepting the plea of mistake, raised by the respondent, regarding her religious identity?
- (ii) Whether the fact that the respondent is a born Christian, would be sufficient to declare the marriage as a nullity for violation of conditions under Section 5 of the Hindu Marriage Act?

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9. I have heard Mrs.N.Krishnaveni, learned Senior Counsel appearing for Mr.P.Thiyagarajan for the appellant and Mr.John Jeyakumar, learned counsel

appearing for the respondent in the Civil Miscellaneous Second Appeal.

10. Mrs.N.Krishnaveni, learned Senior Counsel appearing for the appellants would take me through the evidence to contend that there is plethora of documentary evidence to establish the fact that the respondent had throughout claimed that she was a Christian. Referring to the documents summoned from the educational institutions namely, Exts.P5, P6, A7, P8, P9, P10, P13, P14, P20 and P21, the learned Senior Counsel would contend that the plethora of evidence available on record would sufficiently demonstrate that there was misrepresentation regarding the religion of the respondent at the time of marriage and the same by itself would constitute a cause for declaration of the marriage as nullity under Section 12(1)(c) of the Act. The learned Senior Counsel would further contend that reliance placed upon the documents namely Exts.R3, R4, R5, and R6 by the courts below is wholly misconceived as either the temple or other associations which had issued those documents have any statutory power to maintain such registers.

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11. The learned Senior Counsel would also draw my attention to Ex.P.24 to contend that the said document would amply demonstrate the nature of fraud played by the respondent and her family in obtaining consent of the appellant for the marriage. Ex.P.24 is a copy of the register maintained by the Taluk Office and has been marked through R.W.6, who is the Deputy Tahsildar. Drawing my attention to the entries made in Ex.P.24, Mrs.N.Krishnaveni, learned Senior Counsel appearing for the appellant would submit that the respondent herein had made an application bearing No.5049 seeking Community Certificate and the certificate in fact has been issued to her bearing certificate No.29973 certifying that she is a Christian Nadar.

12. The learned Senior Counsel would contend that having obtained such certificate, the respondent had again applied after filing of H.M.O.P on 01.06.2005, seeking Community Certificate under Ex.R.11 and had on the same day obtained Community Certificate showing that she is a Hindu Nadar under Ex.R.10. Drawing my attention to cross-examination of R.W.6, the learned Senior Counsel would submit that the very fact that the application was filed on 01.06.2005 and the certificate was obtained on the same day would show that the

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procedure prescribed for issuance of a Community Certificate has not been followed before issuance of Ex.R.10.

13. It is also pointed out by the learned Senior Counsel that R.W.3 has admitted that the procedure for an enquiry has been set out in G.O.No.781 dated 02.05.1988 for issuance of Community Certificate. Contending that the documents namely Ex.R.1 to Ex.R.11 having emanated after filing of the petition, the leaned Senior Counsel would submit that the courts below fell in serious error in accepting them.

14. Contending contra, Mr.John Jeyakumar, learned counsel appearing for the respondent would submit that all the documents, which show that the respondent is a Christian Nadar are the result of mistake at the time when the respondent was admitted in the school for the first time and the mistake was carried out throughout the period during which she undertook her education in various institutions. The learned counsel would further submit that Exts.R.7 and R.8 would show that the parents of the respondent had married under Hindu custom and therefore, the respondent is only a Hindu. While conceding that the

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documents relied upon by the respondent namely, Ex.R.3 to R.6, R.8 to R.11 had emanated after the proceedings, the learned counsel would contend that they are only certificates issued based on the register maintained by the concerned persons and therefore, they cannot be rejected on the ground that they are after initiation of the proceedings.

15. The learned Senior Counsel would draw my attention to Ex.B.3 dated 17.06.2005 said to have been issued by Irulappapuram Hindu Nadar Samuthayavagai, which reads as follows:

சான்றிகழ்
கன்னியாகுமரி மாவட்டம், அகஸ்தீஸ்வரம் தாலுகா, வடிவீஸ்வரம்
கிராமம், இருளப்பபுரம் ஊரில் வீட்டு எண் பழைய எண் 34 / 3 - 32 பி5
புதிய எண் 71 ல் வசித்து வரும் பி.ஸ்டீபன் (க.பெ.அமரர், பொன்னுமணி
நாடார்) மற்றும் அவரது மனைவி பிள்ளைகள் அனைவரும் 1992 முதல்
இந்து மதத்தில் சேர்ந்து, இருளப்பபுரம் ஊர் சிவன் கோயிலில்
உறுப்பினர்கள் ஆவார்கள் என்பதை இதன்மூலம் சான்றளிக்கிறேன்.

She would contend that there is no evidence of conversion and in the absence of evidence for conversion into Hinduism, the courts below were not right in accepting the plea of mistake raised by the respondent.

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16. I have considered the rival submissions.

17. The essential question to be determined is as to whether there was a misrepresentation regarding the material fact at the time of marriage so as to invalidate the marriage in terms of Section 12(1)(C) of the Hindu Marriage Act and whether the courts below were right in accepting the plea of mistake raised by the respondent. As rightly pointed out by the learned Senior Counsel appearing for the appellant, plethora of documentary evidence is available in the case on hand to support the claim of the appellant that the respondent was a Christian by birth and she was practising Christianity throughout her life. This is evidenced by indisputable documents in the form of educational records. The earliest documents is of the year 1988 when the respondent had made an application for joining Good Shepherd Matriculation School on 14.04.1988 wherein one Rajavel has signed as a Guardian and the respondent is shown as a "Christian Nadar". The Transfer Certificate issued by the said school on 27.04.1992 also described her as a Christian Nadar. Thereafter, the appellant had joined the Duthie Girls Higher Secondary School at Nagercoil and left the said institution on 07.06.2000. The

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Transfer Certificate issued by the said school is marked as Ex.A.6 and even in the said certificate the respondent is described as a Christian Nadar. The respondent had under her own signature applied to Holy Cross College, Nagercoil seeking admission in B.A. (Economics) on 07.06.2000 the said application is also countersigned by her father and she is described as a Christian. The Transfer Certificate issued by the said College also describes her as a Christian.

18. It will be pertinent to point out at this juncture that there is evidence available to show that the respondent had applied for Community Certificate as Christian and has obtained Community Certificate as evidenced by Ex.A.24. Ex.A.24 was admitted by R.W.6 that the register was maintained by the Office of the Tahsildar. As against the above unimpeachable evidence that is available on record, the respondent has produced certain documents to show that she is a Hindu. Ex.R.10 is Community Certificate issued to her on 01.06.2005. The application for issuance of Community Certificate under Ex.P.11 has been made on the same day. Evidently, the said certificate has been issued without following the procedure for issuance of the said certificate as prescribed in the Rule in G.O.Ms.No.781 dated 02.05.1988.

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19. Apart from the above, the said certificate has been obtained after initiation of the proceedings. As regards the other documents also, those documents have been produced as the certificates issued by the associations of persons which have no legal sanctity. While the marriage can be performed in a Temple and marriage certificate can be issued by a Temple, the Temple authority or any other authority cannot issue a certificate evidencing the marriage that had taken place elsewhere. A perusal of Exts.B4, B5, B6 and B7 would show that the Secretary of the Temple had issued certificate certifying that the marriage had taken place elsewhere. All these certificates have been obtained after the filing of the original petition seeking a declaration as to the nullity of the marriage. Adverting to the questions of law framed, it is admitted by the respondent that she has been described as a Christian in all her educational records. She would claim that it is a mistake. Once the fact that there has been such wrong description is admitted, it is for the person, who claims that the wrong description is a result of mistake, to prove the same.

20. Looking at the evidence available on record, I am constrained to hold that the respondent has not established the plea of mistake raised by her.

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Consistently over a period of 12 years that is from 1988 to 2000 various documents have been produced to demonstrate that the respondent has described herself as a Christian. I must also point out that Ex.P.24 cannot be ignored. R.W.6 issuing authority had admitted that the respondent had obtained the Community Certificate showing her religion as a Christian earlier and after filing of the original petition seeking a declaration as to nullity of the marriage, she had applied again on 01.06.2000 and obtained certificate to the effect that she is a Hindu Nadar. This would demonstrate the attempt to cover up the effect of the documents, which had been produced by the appellant. I am, therefore, of the considered opinion that the courts below were not right in placing burden of proving misrepresentation on the appellant and concluding that the appellant has not discharged the burden. Once the plea of mistake is raised, it is for the party pleading mistake to prove the same. The documentary evidence that is made available would clearly point out the fact that there was a misrepresentation with reference to the material fact namely, the religion of the respondent at the time of marriage. Ex.B.3 assumes important in these circumstances. It is claimed that it is a certificate issued by the Irulappapuram Hindu Nadar Samuthayavagai. The said document certifies that the respondent's father Stephen, his wife and children had

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joined Hindu Religion in 1992. Therefore, it is clear that the respondent and her parents were Christians at some point of time. A person, is admittedly a Christian, has to prove conversion if he or she seeks to claim that he or she is a Hindu. There is total absence of evidence in this regard.

21. For the foregoing reasons, I am of the considered opinion that the courts below had not appreciated the evidence, which are available on record. They had chosen to ignore very crucial documentary evidence which had resulted in their findings being against the documentary evidence that is available on record. I am constrained to point out that the lower appellate court had not adverted to the fact that the various documents particularly the official documents which are maintained by people, who are statutorily obliged to maintain such documents disclose that the respondent is a Christian. It had chosen to rely upon documents that emanated after the filing of the original petition. The claim of mistake has been left unsubstantiated. Resulting in, the courts below reaching a conclusion, which militates against the evidence available on record and therefore, I am constrained to conclude that the findings of the courts below which run against the documentary evidence are perverse and therefore, they are

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liable to be set aside. The first question of law framed is answered against the respondent and in favour of the appellant to the effect that the courts below were not in right in accepting the plea of mistake in the absence of any evidence. Misrepresentation regarding the religion would be a misrepresentation regarding a material fact and would affect the very validity of the marriage. Therefore, the second question of law is also answered in favour of the appellant.

22. The Civil Miscellaneous Second Appeal in C.M.S.A(MD) No. 5 of 2009 is therefore allowed. The judgment and decree of the courts below are set aside. The petition in H.M.O.P.No.20 of 2005 stands allowed. The marriage that took place on 04.12.2003 is declared as null and void. However, in the circumstances of the cases, there shall be no order as to costs.

23. The Civil Revision Petition in C.R.P(MD)No.1481 of 2012 is filed to set aside C.M.A.No.8 of 2009. Initially H.M.O.P.No.13 of 2007 on the file of the Subordinate Judge, Nagercoil, was filed by the respondent/wife seeking divorce on the ground of cruelty. An ex-parte decree came to be passed in the said Original Petition on 06.08.2006. The petitioner/husband has filed an application

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seeking to set aside the ex-parte decree which came to be dismissed. Challenge to the same in C.M.A No. 8 of 2009 also failed. Hence, the Revision.

24. The petitioner herein has filed CMSA(MD) No.5 of 2009 challenging the dismissal of his petition in H.M.O.P.No.20 of 2006 seeking a declaration that the marriage is nullity. Since the said Civil Miscellaneous Second Appeal is allowed and the marriage itself has become nullity, the exparte decree passed in H.M.O.P.No.13 of 2007 granting divorce is no longer valid. Therefore, the Civil Revision Petition has in effect become infructuous, since the very marriage has been declared to be null and void. Hence, the civil revision petition is disposed of as having become infructuous. No costs.

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- 1.The District Judge, Kanyakumar at Nagercoil
2. The Principal Subordinate Judge, Nagercoil.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

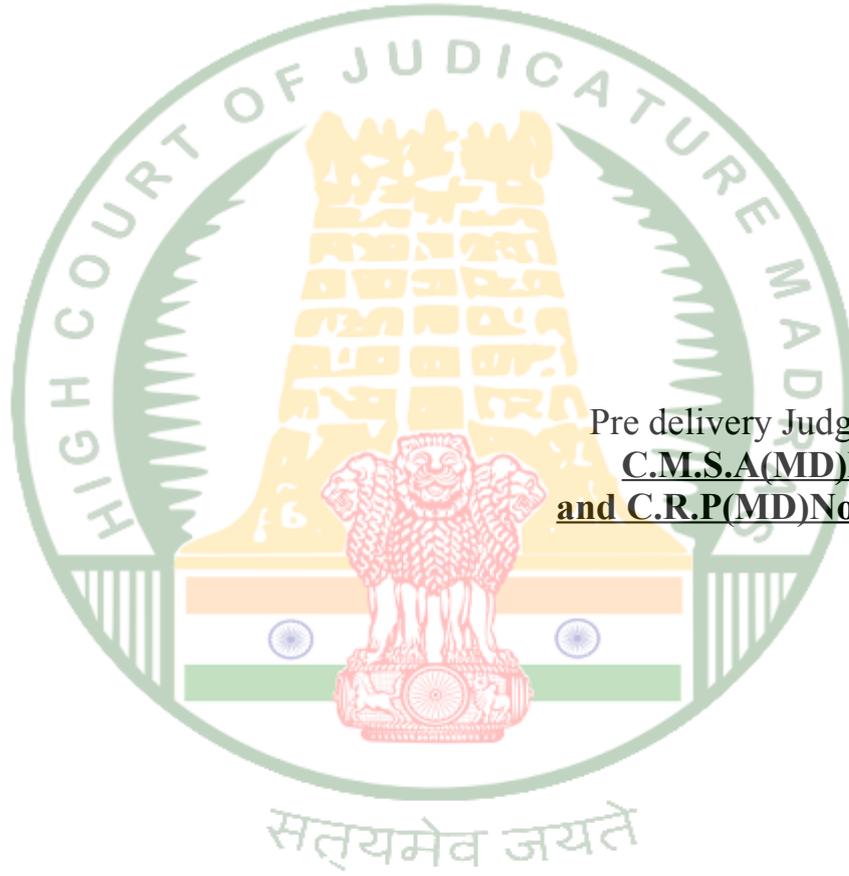


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R.SUBRAMANIAN, J.

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Pre delivery Judgment made in
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