
(2014) 03 MAD CK 0207

In the Madras High Court

Case No : W.P. No. 15459 of 2012 and M.P. Nos. 1 and 2 of 2012

C. Sivagama Sundari

APPELLANT

Vs

Inspector General of Registration

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Hindu Marriage Act, 1955 — Section 4, 5, 7, 8
Registration Act, 1908 — Section 49

Citation : (2014) 3 CTC 277 : (2014) 2 LW 985 : (2014) 3 MLJ 863

Hon'ble Judges : S. Rajendran, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S. Rajeswaran, J.—This writ petition has been filed for issuance of writ of Certiorarified Mandamus, calling for the records of the third respondent in Marriage Registration Certificate No. 9 of 2010 dated 04.02.2010 as communicated in his proceedings No. 45 of 2012 dated 24.02.2012 so as to quash the same by directing the 3rd respondent to remove the same from the records. The case of the petitioner as given in the affidavit filed in support of the writ petition is as follows:

The petitioner after completing her school education, joined B. Tech in an Engineering College at Thiruvannamalai for the academic years 2006-2010. The fourth respondent was a Lecturer in that College and who, on 04.02.2010, called the petitioner to accompany him to a family function. The fourth respondent informed her that he was marrying a woman at the Registrar Office and the petitioner had to sign in a form as witness to the marriage. They went to the third respondent's office at Marakkanam from Thiruvannamalai, wherein she was asked to sign in a form as a witness to the marriage. She also put only one signature, that too, as a witness and thereafter she was dropped back at Thiruvannamalai.

2. While so, when the petitioner's parents were arranging for her matrimonial

alliance, the fourth respondent dropped a bomb-shell by stating that the petitioner had already married the fourth respondent and the marriage was registered on 04.02.2010 itself. The fourth respondent further threatened that if the petitioner married some one else, then, he would expose her to the world and tarnish her name. Immediately, the petitioner and her father along with an advocate visited the office of the third respondent on 17.02.2012 to verify the records. A search application was made for the inspection of the records. Though the third respondent permitted them to inspect the records, he could grant a Certified Copy of the proceedings dated 04.02.2010, as the signature of the erstwhile Sub-Registrar (the 5th respondent herein) has not been appended so as to authenticate the proceedings.

3. According to the third respondent, none of the mandatory documents are available or the mandatory procedure was followed in the entire proceedings dated 04.02.2010. On noticing the shortcomings, the third respondent contacted the 5th respondent over phone and after talking to him, he informed the petitioner that the 5th respondent would come over to the office on 22.02.2012 to verify the whole issue. On 22.02.2012, the petitioner along with her father visited the office of the third respondent and found that the 5th respondent was present in the third respondent's office who perused the entire records. After scrutiny, the following defects were noticed by them viz.,

- a) there is no proof or document regarding the manner in which the alleged marriage was conducted;
- b) It is not traceable on the issue under which personal law, the alleged marriage was conducted;
- c) the 4th respondent being a Christian, the Hindu Law has no application to the entire issue nor the petitioner converted herself as a Christian, and
- d) if at all any marriage would happen, it should be only under the Special Marriage Act, but, no record is available to that effect.

4. It is also found that there is no certificate of the person viz., the Priest who conducted the marriage and also there is no proof that the alleged marriage took place within the jurisdiction of Marakkanam Sub-Registrar's office. As the 5th respondent has not signed, the entire transaction is an unauthorized one. Further, Form II which is an application for Memorandum for Registration of Marriage was not at all submitted and so are the mandatory documents that are to be enclosed to Form II. Even in Form I, the signature of the then Registrar (5th respondent) is not available. Apart from that, the following documents also either are not available or not authenticated.

- 1. Form VII;
- 2. Identification of witness No. 1 and further details of the witness;
- 3. Identification of witness No. 2 and further details of the witness;

4. Identification of the Priest and further details of the Priest;
5. Family Card of the petitioner;
6. School Certificate of the petitioner;
7. Passport of the 4th respondent;
8. College Mark Sheet of the 4th respondent;
9. Family Card of the 4th respondent;
10. School Certificate of the 4th respondent.

5. In view of the above shortcomings and deficiencies, the 5th respondent ought to have returned the papers to the 4th respondent as defective instead of keeping them at the office of the third respondent.

6. It is the case of the petitioner that the 6th respondent who is now functioning as the Sub Registrar (3rd respondent) strangely requested the 5th respondent on 22.02.2012 to sign and authenticate the documents with back date, as if it was done on 04.02.2010. The 5th respondent refused to do so by saying that he could consider the same if a request was made officially. Thereafter, the third respondent sent a letter dated 24.02.2012 stating that the marriage has been registered in Document No. 9/2010 on 04.02.2010 and advising the petitioner that the said registration of marriage could be cancelled in Court only. This was also followed by another letter dated 29.02.2012, stating that as the previous Sub-Registrar i.e. the 5th respondent did not sign the Certificate proceedings and as it was not brought on computer also, a certified copy could not be given to the petitioner. By letter dated 29.02.2012, the third respondent stated that Form II was not also enclosed as per the mandatory requirements of law, but, enclosed a certified copy of the documents which were available. Therefore, according to the petitioner, no marriage whatsoever conducted between the petitioner and the 4th respondent, so as to register the same under the Tamil Nadu Registration of Marriages Act, 2009 (Act No. 21/2009). Hence, the claim of the third respondent that the marriage between the petitioner and the 4th respondent was registered and the same could be cancelled by approaching the courts only, is unenforceable, unauthorized and invalid.

7. The petitioner sent a representation dated 02.03.2012 requesting to send the alleged Marriage Certificate as per Form III of the rule and this was followed by another representation dated 05.03.2012. She decided to inspect the alleged registration certificate No. 9/2010 as claimed by the 3rd respondent and found that in Form No. 96 titled as "Account-B", details already entered with regard to some other person were revised and with different hand writing new details were overwritten on the words portion. The manipulation is so manifest even to bare eyes. Hence, the alleged registration under Sl. No. 9/10 dated 04.02.2010 is void-ab initio and is liable to be quashed in this writ petition.

8. Now, the petitioner's parents have decided to solemnize her marriage, but,

the 4th respondent issuing threats based on the marriage certificate dated 04.02.2010. She did not want to give a police complaint, against the 4th respondent as it would give undue publicity and tarnish her name and her parents name. Hence, she filed the above writ petition for the aforesaid relief.

9. Counter affidavit has been filed by the third respondent who is also the 6th respondent in this writ petition.

10. It is stated by the third respondent that in Form No. II, which is Memorandum for Registration of Marriage, the petitioner has given her address in Column No. 2(g) as No. 24, Sengam Road, First Street, Thiruvannamalai and not as mentioned in the affidavit. The third respondent acknowledge the petitioner's letter dated 18.02.2012. On scrutiny of the office records, the third respondent found that the then S.L. Manoharan (the 5th respondent) passed an order on the request of the petitioner on 18.02.2010 that the marriage of the petitioner with the 4th respondent has been duly registered as No. 9/10 on 04.02.2010 under Act 21/2009. There is no provision in that Act to cancel the certificate of marriage and therefore, she could seek her remedy in a court of law only.

11. It is the case of the third respondent that he never informed that he could not grant a copy of the petitioner's marriage certificate, as the marriage was not registered properly. What he said was that a copy could not be granted as the office copy of the same had not been signed and scanned. As per Section 4 of the Act, the Marriage Registrar has verified the Memorandum for Registration of Marriage and the identity of the parties and the witnesses. No certificate is necessary from the Priest who solemnized the marriage. The person who could be present at the time of the marriage signed in the memorandum and as per the particulars, the marriage took place at Madha Koil Street, Marakkanam, within the jurisdiction of the third respondent. It has been reiterated by the third respondent that mere omission of the then Sub-Registrar, the 5th respondent herein in the office copy would not rend the registration itself as null and void. It is further stated by the third respondent that the petitioner and her husband presented the memorandum for registration of the marriage on 04.02.2010 stating that their marriage was celebrated in the presence of one Mariappan, 10 Madhakoil Street, Marakkanam, which is mentioned in Column No. 5 of the Memorandum for the Registration of the marriage. She has also clearly signed in Column No. 9 (signature of wife) and declared that their marriage was solemnized as per the Tamil Nadu Act 21 of 2009. She also affixed her left thumb impression. In such circumstances, the third respondent questions the claim of the petitioner that there is no valid marriage certificate and the same is liable to be cancelled. It is further stated by the third respondent that she being an Engineering Graduate, the petitioner cannot now say that she signed as a witness only, especially when she has clearly signed in the relevant column as wife. Hence, he prayed for the dismissal of the writ petition.

12. Notice was also served on the fourth respondent and a counter affidavit was

filed on behalf of the fourth respondent by his father Logidasan.

13. In the counter affidavit filed on behalf of the fourth respondent, the fourth respondent's father stated that the fourth respondent is now working in UK and he executed a General Power of Attorney in his favour on 24.07.2012 to appear before this Court. This Power of Attorney had been adjudicated on 06.08.2012 on the file of the District Registrar, Tindivanam.

14. The fourth respondent's father stated that the marriage took place between the petitioner and the fourth respondent on 04.02.2010 and the third respondent issued necessary marriage certificate for its registration. He further stated that the fourth respondent was a Guest Lecturer in the Engineering College for one Semester. Both the petitioner and the fourth respondent fell in love and because of the pressure given by the petitioner, the fourth respondent performed the marriage without the consultation of their parents. The petitioner's father is a political person and he tried to separate the petitioner and the fourth respondent. According to the fourth respondent's father, the marriage was well planned and the petitioner herself gave all the documents such as the petitioner's father's ration card for address proof, her 10th Standard mark sheet for the proof of her date of birth and her driving licence for photo identification. The marriage was performed at Murugan Temple in Marakkanam and thereafter, the marriage has been registered in the third respondent's office as per Tamil Nadu Act 21/2009. Both the petitioner and the 4th respondent took so many photos to prove their relationship. Subsequent to the marriage, the petitioner and the 4th respondent lived together at Thiruvannamalai for quite some time and on 12.09.2011, the 4th respondent informed the petitioner that he would leave for UK for his Ph.D in Computer Engineering. Even after leaving India, the 4th respondent and the petitioner were regularly in contact over phone and in fact, the fourth respondent gifted a mobile phone to the petitioner to talk to him.

15. The fourth respondent's father further stated that the petitioner's father was searching for alliance for the petitioner and the same was informed by the petitioner to the fourth respondent in the last week of January 2012. The fourth respondent came to India on 1st February 2012 and met her in Thiruvannamalai. The petitioner's father was not able to accept the love relationship and the marriage and therefore, he has been trying to separate both of them and one such attempt is the present writ petition. It is the further case of the fourth respondent's father that the fourth respondent is a Hindu and not a Christian as mentioned in the petitioner's affidavit and therefore, there is no question of performing the marriage under the Special Marriage Act. Hence, valid marriage was properly registered as per the provisions of the Tamil Nadu Act 21, 2009 and therefore, there is no question of cancelling the marriage certificate. He also referred to the petition filed by the fourth respondent in an H.M.O.P.

16. A reply affidavit has been filed by the petitioner for the counter affidavit filed by the third respondent, reiterating the stand taken by her in the affidavit filed in support of this writ petition.

17. A reply affidavit has also been filed by the petitioner for the counter affidavit filed on behalf of the fourth respondent. In the above reply affidavit, it is stated that the entire counter affidavit filed by the fourth respondent's father as Power of Attorney is nothing but an ear say, which is not admissible. Apart from that, on merits also, the petitioner questions the averments contained in the counter affidavit and stuck to her stand in the writ petition. She has also stated that she is yet to receive summons in H.M.O.P. No. 41/2012 said to be pending on the file of the Sub Court, Tindivanam.

18. Heard Mr. Jothi, the learned counsel appearing for the petitioner, Mr. R.C. Paul Kanakaraj, the learned counsel appearing for the fourth respondent and the learned Special Government Pleader appearing for the respondents 1 to 3. I have also gone through the entire documents made available on record.

19. The learned counsel appearing for the petitioner submits that a fraud has been committed by the fourth respondent in dragging the gullible petitioner to the Sub-Registrar office and made her to sign under the guise of a witness and created an illegal document to show that the petitioner and the fourth respondent have married each other. He further adds that Act No. 21/2009 came into force with effect from 24.11.2009 and under its provisions, a registration is compulsory only after the marriage has been performed validly between a man and a woman. When no marriage is performed in accordance with the personal laws of the parties, or the identity of the parties is not established or the documents tendered before the office do not prove the marital status of the parties, then, he has to refuse to register the marriage. The learned counsel states that in the present case, no document whatsoever has been produced to prove the marriage is performed in accordance with personal law nor any authenticated document had been filed to establish the identities of the witnesses and the genuineness of the documents. In such circumstances, there is absolutely no question of registering a marriage and hence, the marriage certificate as registered in this case is a nullity and the same is to be quashed as void ab initio. In support of his submissions, the learned counsel for the petitioner relied on the following judgments:

1. B. Jagadeesh Chandra Bose Vs. The Superintendent of Police Kanyakumari District, The Inspector of Police, Mani and The Inspector General of Registration, Govt. of Tamilnadu

2. Smt. Seema Vs. Ashwani Kumar,

3. C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, and

4. An unreported judgment dated 05.02.2013 in W.P. No. 30003/2012 Sindhu G. v. S. Felicks Arokia Rajesh and Others.

20. He further relied on the proceedings issued by the Inspector General of Registration on 03.11.2011, according to which, complaints of fraudulent

registrations have to be forwarded to the District Registrar, who shall register the same and look into the complaints. The learned counsel contends that this has been completely omitted in this case and instead the petitioner has been asked to approach the court of law to redress her grievances. The learned counsel further refers to the proceedings of the H.C.P. which was filed by the fourth respondent in H.C.P. No. 312/2013 and he also provided a copy of the order passed by this Court in H.C.P. No. 312/2013. The learned counsel questions the conduct of the fourth respondent in not filing the counter affidavit directly when he himself filed an affidavit in H.C.P. No. 312 of 2013. Hence, he concludes that a case has been definitely made out for an interference by this Court or else innocent victims like the petitioner would be severely affected and demoralized.

21. Per contra, the learned counsel for the fourth respondent submits that it is a case of two persons getting married after falling in love, but the same is now sought to be repudiated by the petitioner due to the influence and intimidation of her father. According to the learned counsel for the fourth respondent that all the documents including the petitioner's family card, her mark sheet and her driving license has been produced before the third respondent's office and a proper signature was put in by the petitioner and her thumb impression was also found place. Therefore, it is not open to the petitioner now to repudiate everything, as if she did not know anything, when she is an Engineering Graduate.

22. The learned Special Government Pleader while reiterating the averments contained in the counter affidavit filed by the third respondent, submits that in this case a valid marriage Registration has been done after following the procedure as contemplated in the Tamil Nadu Act 21 of 2009 and therefore, the proper remedy is to approach the Family Court and not the Wit Court.

23. I have considered the rival submissions made by the learned counsel.

24. The case of the petitioner is that she is an innocent victim at the hands of the fourth respondent, who took her to the third respondent's office and made her to sign as if she was a witness to the fourth respondent's marriage. But, the case of the fourth respondent is that, they got married with each other and now the petitioner is disowning him due to the influence of her father. It is true that the counter filed on behalf of the fourth respondent by his father is not admissible in evidence, as his father was not personally present to speak about the same. But, even according to the learned counsel for the petitioner, that he himself filed an affidavit in H.C.P. No. 312 of 2013 claiming that he is the husband of the petitioner herein. In such circumstances, this contains the disputed fact with regard to the manner in which the petitioner appeared before the third respondent and signed the documents. Such disputed questions could not be gone into this writ petition and therefore, I am of the considered view that the proper remedy for the petitioner is to approach the competent court of law to redress her grievances.

25. The above conclusion of mine is also fortified by some of the documents

available in the typed set of papers. The petitioner's father's family card, mark sheet and driving license were found as part of the documents filed before the Sub Registrar's office and therefore, it has to be explained as to how these documents could have been filed at all by the fourth respondent before the third respondent's office unilaterally. Though the learned counsel for the petitioner contends that the documents have not been properly attested, still they have not been disowned and therefore, the manner in which these documents were filed before the third respondent is to be gone into in an elaborate trial which could not be conducted in the writ proceedings.

26. In *Seema v. Ashwani Kumar* (supra), the Hon'ble Supreme Court for the first time directed that the marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective State where the marriage is solemnized.

27. The statement of objects and reasons of Tamil Nadu Act 21/2009 also refers to the above said Supreme Court's judgment and only in the context and in order to provide for the compulsory registration of all marriages of all persons, the State Government considered it necessary to enact the Act 21/2009.

28. In *C.S. Rowjee represented by Power of Attorney holder Sri C. Apparao Rowjee and Others v. State of A.P. and Others* (supra), the Hon'ble Supreme Court held that when allegations of malafide or improper motives, all form part of persons, are raised, the person in authority should place on record their version or agenda.

29. This has been relied on by the learned counsel for the petitioner to state that when allegations of improper registration were raised against the 5th respondent and even though the 5th respondent has been served he has not come forward by denying the same by filing a counter affidavit. In such circumstances, all the allegations raised by the petitioner are deemed to have been accepted by the 5th respondent.

30. In *B. Jagadeesh Chandra Bose and Another v. Superintendent of Police, Kanyakumari District, Nagercoil and Others* (supra), a Division bench of this Court held as follows:

29. Insofar as the Hindu marriages are concerned, Section 5 of the Hindu Marriages Act contemplates conditions for a Hindu marriage, Section 7 relates to ceremonies and Section 8 relates to registration of Hindu Marriages. Unless conditions u/s 5 relating to a valid consent and either of the spouse is not insane, the bridegroom has completed 21 years and bride completes 18 years and they are not within the prohibited degrees and are not sapindas, marriage cannot be solemnized. Unless there is solemnization marriage, it cannot be performed as per the ceremonies u/s 7 and consequently, registration of such marriage u/s 8 cannot be done. Rule 5 of the Tamil Nadu Hindu Marriage (Registration) Rules, 1969, contemplates compulsory registration of marriage and the mode of application for registration. Applications are to be made in Form-I, along with

application in Form-III, for registration of Hindu Marriage on the date of solemnization and a declaration is also provided as per Rule 10 in Form No. III by the husband and wife where the marriage is registered on the date of solemnization. Unless conditions under Sections 5 and 7 are fulfilled, the marriage cannot be registered u/s 8 and the registration of the marriage should also be in conformity with the Rules referred to above. Without following the above, a Hindu Marriage cannot be registered. Further, registration of the marriage cannot be equated to a registration of marriage agreement.

31. In the unreported judgment dated 05.02.2013 made in W.P. No. 30003/2012, it is true that the learned Single Judge quashed the marriage certificate issued by one Rev. G. Christudoss and the certificate of registration of marriage issued by the Sub Registrar, Sembiam, Chennai-11. But a perusal of that judgment would show that the certificate of registration was issued by the Sub-Registrar, Sembiam on the basis of the marriage certificate issued by the above said Rev. G. Christudoss under the provisions of Government Act XXI/1860 and M.P. Government Act 44/73, The learned Judge wondered how such an act gave power to the above named person to issue the marriage certificate at all. Only in that context, the learned Judge quashed the marriage certificate and the certificate of registration.

32. However, I find force in the arguments of the learned counsel for the petitioner that the order passed by the third respondent dated 24.02.2012 directing the petitioner to approach the court of law to cancel the marriage registration registered on 04.02.2010 is contrary to the circular issued by the Inspector General of Registration who is the first respondent in this writ petition.

33. A copy of the circular dated 03.11.2012 issued by the first respondent has been provided to this Court and a perusal of the same would show that there are clear instructions given by the first respondent as to how to act when a person is questioning the marriage registration and certificates issued by the Sub-Registrar's office on the ground of fraud. For the sake of convenience, the relevant portion in the circular is extracted as under:

In the light of the above discussion, following mandatory procedure is prescribed to deal with the complaints relating to fraudulent registrations through impersonation or production of false documents and evidences.

(a) All such complaints of fraudulent registration received by the department have to be forwarded to the respective District Registrar (Admin) who shall register the same in a register of complaints relating to fraudulent registration in the following format; Sl. No.

(b) After entering the complaint, he shall issue notices to the executants of the document and witnesses to appear for enquiry along with the complainant and he should also take witness of the registering officer and if needed, call for the records from the revenue department and also summon the respective Village Administrative Officer (VAO) to appear before him with the village accounts.

(c) Once the enquiry is completed following summary procedure and it is proved that the registration has taken place through impersonation and through production of false documents and statements/admissions, he shall pass orders to this effect, recording his findings and issue direction to the concerned registering officers to file F.I.R. against the concerned persons and also to make a note in the Index-II of the document which was fraudulently registered to the effect that the "registration is annulled as per the proceedings of the District Registrar (proceeding No. to be noted) and it shall have same effect as prescribed u/s 49 of the Registration Act".

(d) After receiving the order of the District Registrar, the registering office shall immediately file F.I.R. and make entries as stated above in Index-II without any loss of time. The registering officer shall maintain a separate register in this regard in his office to register all such orders of the District Registrar in following format. Sl. No.

(e) The District Registrar should complete the enquiry maximum in two months in each case and if the parties are not appearing for more than 2 summons, ex-parte order should be passed based upon the documents, evidences and witnesses available. While issuing summons, mode of R.P.A.D. should be adopted.

However, these instructions will not apply to the cases where the complainant has admitted execution by himself due to whatever reasons. It is further emphasized that the procedure prescribed above is only to deal with fraudulent registrations done and it should in no way be construed to mean that the registering authority shall go into the issue of deciding title in case of rival claims on certain basis.

Any failure in registering complaints relating to fraudulent registration through impersonation or production of false documents/statements etc., and initiation of enquiry followed by filing of F.I.R. and making of annulment entries in Index-II shall be viewed seriously and necessary disciplinary action will be initiated against the concerned District Registrar (Admin) and the registering officer.

This order comes into immediate effect.

Any party aggrieved by the order of the District Registrar may prefer an appeal with Inspector General of Registration.

34. From the above, it is clear that the petitioner has also assailed the marriage certificate issued by the third respondent on the ground of fraud. In such circumstances, the third respondent ought to have followed the procedure contemplated in the circular dated 03.11.2011 instead of directing the petitioner to approach the court of law. As seen above, the complaint should be forwarded to the respective District Registrar (Admin) who shall issue notices to the executants of the documents and the witnesses to appeal for the enquiry along with the complainant. If necessary, records should be called for from the Revenue Department and summons should be sent to the respective Village

Administrative Officers to appear. Once enquiry is completed and it is proved that the registration had taken place through impersonation and through production of false documents, the District Registrar (Admin) shall pass orders to this effect, recording his findings and issue directions to the concerned Registering Officers to file F.I.R. against the concerned person and also to make a note in the document which was fraudulently registered to the effect that "registration is annulled". A time limit of two months is also imposed in the circular and power is also conferred to pass ex-parte orders. It is also stated in the circular that any failure in registering complaints relating to fraudulent registrations, shall be viewed seriously and necessary disciplinary action will be initiated against the concerned Registrar and the Registering Officer.

35. It is unfortunate that this has not been specifically brought to the knowledge of the Court by the Special Government Pleader and the first respondent has not come forward to file a counter affidavit regarding the circular issued by the first respondent. Therefore, I am of the considered view that the letter dated 24.02.2012 issued by the third respondent informing the petitioner to approach the court of law to cancel the registration certificate is absolutely unwarranted and uncalled for and therefore, the same is liable to be set aside and accordingly set aside. Instead the District Registrar (Admin) should take up this matter as contemplated in the circular and complete the enquiry within two months.

36. Hence, in the light of the above facts and circumstances, while setting aside the order of the third respondent dated 24.02.2012 in the proceedings No. 45/12, this Court directs the third respondent to place the entire papers/documents/records before the District Registrar (Admin), Tindivanam, within a week from the date of receipt of a copy of this order and the District Registrar (Admin) Tindivanam is directed to take up the complaint of the petitioner and conduct an enquiry as contemplated in the circular No. 67 dated 03.11.2011 (C. No. 52338/C1/2011) issued by the Inspector General of Registration within two months thereafter. Once the enquiry is completed and it is proved that the registration has taken place fraudulently, then, necessary criminal action is to be initiated against the concerned persons and further steps should be taken to annul the marriage certificate No. 9/10 dated 04.02.2010. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.