

A.S.(MD) No.96 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.11.2024	29.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**A.S.(MD) No.96 of 2016
and
C.M.P.(MD) No.6350 of 2016**

██████████

... Appellant

-vs-

██████████

... Respondent

Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree in O.S.No.19 of 2011, on the file of the Family Court, Madurai, dated 07.04.2016.

For Appellant : Mr.R.Karunanidhi

For Respondent : Mr.S.Sukumaran

J U D G M E N T

RMT.TEEKAA RAMAN, J.

The defeated defendant – wife is the appellant herein.

2. The respondent / plaintiff – husband filed the suit in O.S.No.19 of 2011, before the Family Court, Madurai, seeking to declare the marriage solemnized between him and the defendant on 06.01.2005 as null and void.

3. For the sake of convenience, the parties are referred to as per their ranking in the original suit.

4. As per the plaint averments, the plaintiff belongs to Christian religion and the defendant belongs to Hindu religion. During October, 2004, the plaintiff was taken to Marthandam at Kanyakumari District by his friend in order to fix a girl for marriage. But, the said proposal was not confirmed. Again, at the request of the plaintiff's friend, he was introduced to the defendant's family and informed that he belongs to Christian religion. But, the family members of the defendant expressed that they are not bothering

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about the religious. But, they did not accept to perform the marriage in the Church. Therefore, the marriage was performed on 06.01.2005 in the defendant's house and on 08.01.2005, a marriage reception was performed at Madurai. Thereafter, the plaintiff and the defendant started their marital life at the plaintiff's house at Madurai. But, after the marriage, the defendant was not interested to live with the plaintiff and she always expressed that at the compulsion of her parents, she married the plaintiff and she is also not like the Christian religion, which the plaintiff belongs to. In fact, their marriage was not registered under the Special Marriage Act, 1954, since they belong to different religion. The defendant was also not interested to live with the plaintiff. In spite of mediation, she refused to come and live with him. As the marriage was not registered under the Special Marriage Act, 1954, the plaintiff filed the suit seeking to declare their marriage as null and void.

5. The defendant – wife filed written statement alleging that the marriage between her with the plaintiff was performed at her house as per Christian customs and rites. The family members also participated in the marriage. It is false to state that the marriage between them is invalid due to non-registration of the same under the Special Marriage Act, 1954.

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6. During trial, an issue as to whether the plaintiff is entitled for the relief as prayed for was framed for consideration.

7. On the side of the plaintiff, he was examined as P.W.1 and Exs.A1 to A4 were marked and on the side of the defendant, she was examined as D.W.1 and Ex.B1 was marked.

8. After contest, the learned Trial Judge has decreed the suit. Hence, the defendant is before this Court by way of this appeal.

9. Heard the learned counsel on either side and carefully perused the materials available on record.

10. The points for consideration are as follows:

(i) Whether there is a valid marriage between the parties?

(ii) Whether the order of the Family Court is sustainable in law?

11. The plaintiff, in the pleadings as well as in his oral evidence, has categorically deposed that he belongs to Christian religion, while the defendant belongs to Hindu Nadar religion. Due to the compulsion, despite

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their religion, marriage was solemnized in the defendant's house at Marthandam on 06.01.2005 and the reception was held at Madurai on 08.01.2005.

12. The defendant left the matrimonial home without any reason and mediation failed. She lodged a criminal complaint against the plaintiff.

13. It is the specific case of the plaintiff that since the parties belong to different religions and their marriage was not registered under the Special Marriage Act, 1954, the marriage solemnized between him and the defendant on 06.01.2005 is null and void and hence, he seeks for dissolution of their marriage.

14. During cross-examination, the defendant has admitted that she belongs to Hindu religion. However, she has deposed that their marriage ceremony was performed as per the Christian customs and rites at her house.

15. The factum that the plaintiff belongs to Christian religion and the defendant belongs to Hindu religion is not in dispute.

16. In the marriage invitation (Ex.A1), there is no indication that their marriage was performed as per the personal law applicable to the Christian, namely, the Indian Christian Marriage Act, 1872.

17. It is seen from the records that except the oral testimony of the defendant, for the alleged plea that their marriage was performed as per the Christian customs and rites, no documentary evidence has been adduced by her before the Trial Court to show and demonstrate that the marriage was performed as per the Christian rites as contended by the defendant. Neither any certificate issued by any church authorities nor any person from the church, who is said to have performed the marriage ceremony, has been examined on behalf of the defendant to substantiate her plea that the marriage ceremony was performed as per the Christian customs and rites.

18. The defendant has admitted that their marriage was not performed in any Church and has also admitted that it was performed in her house. Without any pleading, she has also deposed that she belongs to RC Christian religion, but not produced any document, despite a specific question put to her in the cross-examination assumes significance.

19. Thus, this Court finds that based upon the facts as narrated supra and the oral and documentary evidence as discussed supra, we come to the conclusion that both the plaintiff and defendant belong to two different religion and two different faith and their marriage was not performed as the Christian customs and rites. More so, it was not registered under the Special Marriage Act, 1954.

20. At this juncture, it remains to be stated that Section 3 of the Special Marriage Act, 1954 deals with Marriage Officer and Section 4 deals with the conditions relating to the solemnization of special marriages.

21. Section 4 of the Special Marriage Act, 1954, categorically states that a marriage between “any two persons” may be solemnized under this Act, subject to the conditions stipulated therein.

22. It is to be stated that the corollary of the said conditions is that there is nothing in the said Act, which indicates that any marriage between two individuals of different faith is void. On the contrary, Section 5 of the Hindu Marriage Act, 1955, prescribes that “both parties” to the marriage must be a Hindu. It is also relevant to note that under Section 4 of the Indian

Christian Marriage Act, 1872, if “any one of the parties” to the marriage is Christian, their marriage under the Indian Christian Marriage Act, 1872, can be solemnized by the Marriage Officer notified under the said Act.

23. To sum up, when two persons intend to marry, subject to the other conditions, on the point of their religion, to perform their marriage as per the to Hindu customs and rites as recognized under the Hindu Marriage Act, 1955, both parties to the marriage must be Hindus. Under the Indian Christian Marriage Act, 1872, subject to the other conditions stated therein, if anyone of the parties to the marriage is Christian, that is sufficient. Under the Special Marriage Act, 1954, if both the parties to the marriage belong to two different religions and two different faiths, then their marriage can be registered under the Special Marriage Act, 1954. The word used “a marriage of any two persons” has been given judicial interpretation that in the event of inter-faith marriage, to provide registration for such performance, the Special Marriage Act, 1954, was enacted. The marriage between a Hindu with non-Hindu, be it Muslim or Christian or any other religion, as per the Hindu customs and rites is not valid under the Hindu Marriage Act, 1955 and the marital status of the parties has to be necessarily declared as void. In order to be a valid marriage under the Indian Christian Marriage Act, 1872, one of the

parties to the marriage must be a Christian. On the contrary, in view of the specific wordings used in Section 4 of the Special Marriage Act, 1954, it is desirable for the persons, who belong to different religions, to register their marriage under the Special Marriage Act, 1954, as per the procedures mentioned therein before the Marriage Officer notified therein.

24. Section 15 of the Special Marriage Act, 1954, reads as under:

“15. Registration of marriages celebrated in other forms.-Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:-

(a) a ceremony of marriage has been performed between the parties and they have .been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.”

25. The procedure for registration of marriage has been described in Section 16 of the said Act, which reads as under:

“16. Procedure for registration.-Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such

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certificate shall be signed by the parties to the marriage and by three witnesses.”

26. The effect of registration of marriage has been dealt with under Section 18 of the said Act, which reads as under:

“18. Effect of registration of marriage under this Chapter.-Subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents: Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.”

27. Thus, Section 15 of the Special Marriage Act, 1954, provides that the marriage performed in other forms can also be registered by the Marriage Officer as contemplated therein, subject to the conditions mentioned in Sub-Sections (a) to (f) of Section 15 of the Special Marriage Act, 1954. So also, the procedures have also been dealt with in Section 16 of the said Act. The effect of such registration is to make validation of such marriage.

28. Admittedly, in the case on hand, no such registration has taken place and hence, we have no other option but to hold that since no such registration having taken place in the instant case as required under Section 15 of the Special Marriage Act, 1954, the marriage solemnized between the plaintiff and defendant is null and void.

29. It is to be noted that there cannot be a valid form of marriage between an Indian Christian and a Hindu woman celebrated according to Hindu customs and rites. A marriage under Hindu Law with Hindu customs and rites and ceremonies is not permissible between a Christian and a Hindu. A marriage between the Hindu and a Christian is possible only under either the Christian Marriage Act or under the Special Marriage Act. No such

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marriage was taken place between the plaintiff and the defendant under the above said Acts. Inasmuch as the plaintiff is not a Hindu and the marriage ceremony that was conducted in accordance with Hindu Law, the marriage between the plaintiff and defendant is void and hence, there is no valid marriage between them. Further, a marriage between the Hindu and Christian cannot be celebrated under the Hindu Marriage Act and hence, the marriage in the instant case creates no obligation between the parties and there cannot be a relationship of husband and wife, in law, between the plaintiff and defendant.

30. Hence, for all these reasons, we are constrained to uphold the order passed by the learned Family Court Judge

31. Before parting with this Judgment, it is to be noted that this Court time and again finds that the Hindu person marrying a foreigner, namely, non-Indian of having different faith, it is their personal choice to choose the life partner. However, in the Indian soil, the law of the land is to be followed. The procedures prescribed in the Personal Law for the Hindu, as decided in the previous paragraphs, indicate that at the time of marriage both the parties to marriage should be Hindu to perform of marriage rites,

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according to the Hindu customs and rites. If any one of the party does not belong to Hindu faith, the proper procedure is that the marriage has to be registered under the Special Marriage Act.

32. We have noticed that for multiple reasons, Hindu faith persons are performing their marriage according to the Hindu customs and rites with the non-Hindu faith person, which is not approved by the Court of law, thereby, the legality of marriage between the party is under cloud. A person of Hindu faith, who wishes to marry a person of other faith, be it a Christian, Muslim or any other faith, in short, non-Hindu, such a marriage should be registered under the Special Marriage Act, in order to avoid illegality attached to the void marriage and the consequent legal marital status of the parties thereto.

33. In such circumstances, we feel that an awareness on this aspect has to be made to the prospective brides / bridegrooms regarding performance of their marriage ceremony and other legal requirement as stated supra.

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34. In the result, this appeal is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]

29.01.2025

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

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To:

- 1.The Judge,
Family Court,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of
Madras High Court,
Madurai.

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RMT.TEEKAA RAMAN, J.
AND
N.SENTHILKUMAR, J.

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PRE-DELIVERY JUDGMENT
IN
A.S.(MD) No.96 of 2016
and
C.M.P.(MD) No.6350 of 2016

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