

In the High Court of Judicature at Madras

Dated :- 28.09.2007

Coram :

The Honourable Mr. Justice K. RAVIRAJA PANDIAN  
and  
The Honourable Mrs. Justice CHITRA VENKATARAMAN

C.M.A.No.906 of 2000

Murugan ...Appellant/Petitioner.  
Vs.  
Gnanasundari ...Respondent/Respondent.

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the Judgment and decree of the Family Court, Pondicherry in M.O.P.No.95 of 1998 dated 25.1.2000.

For Appellant :- Mr.V.Raghavachari  
For Respondent :- M/s.G.M.Mani Associates

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J.)

This appeal is preferred by the husband against the order of the Family Court, Pondicherry in M.O.P.No.95 of 1998 dated 25.1.2000.

2. The grievance of the appellant herein is restricted to declare the marriage of the appellant with the respondent herein as nullity on the ground that the respondent's first marriage still subsisted when she contracted the second marriage with the appellant.

3. It is seen that the appellant herein got married to the respondent herein as early as 21.8.1999 and the same was registered before the Marriage Registrar, Cuddalore. The appellant got two children through the respondent herein.

4. It is the admitted case of the respondent herein before this Court as well as before the Family Court that she got married to one Loganathan and she got four children through him at the time she married the appellant. It is also stated that the marriage with Loganathan is still subsisting.

5. In the face of the first marriage subsisting, the case of the appellant herein is that the marriage with the appellant cannot be considered as legal marriage in the eye of law. In these circumstances, in the face of Section 5(1) of the Hindu Marriage Act, 1958, a petition was taken up by the appellant for a declaration of the marriage solemnised between the appellant and respondent as null and void. He

sought for the custody of the two children.

6. The Family Court went through the pleadings as well as evidence and came to a conclusion that when the first marriage was subsisting, contracting of the second marriage by the respondent with the appellant herein is opposed to public policy. In these circumstances, the Courts below declared that even though the marriage between the parties is unlawful, yet, on grounds of public policy, the prayer of declaration sought for by the appellant could not be granted. However, on the question of payment of maintenance to the children born out of the second marriage, the Court below directed the appellant to pay a sum of Rs.600/- per month to the respondent herein towards maintenance of the two minor children and to pay the educational expenses of the minor children. The Court below also reserved the liberty of the appellant herein to seek the relief of custody of the minor children by filing a separate petition.

7. Learned counsel for the appellant pointed out that in terms of Section 5 and 23(1)(a) of the Hindu Marriage Act, 1955, the grounds envisaged for declaration of the marriage as nullity are satisfied, and as such, the Court below is not right in its view that the decree of nullity could not be granted. A perusal of Section 5 of Hindu Marriage Act, 1955, shows that the marriage may be solemnised between two Hindus if neither party has a spouse living at the time of marriage. It is not denied by the respondent herein that during the subsistence of the first marriage, she contracted the second marriage with the appellant herein.

8. On the face of the admitted facts and in terms of Section 5(1) of the Hindu Marriage Act, 1955, the marriage of the respondent with the appellant herein cannot be construed as a legally valid marriage solemnised. The order of the Family Court rejecting the prayer of the appellant herein, hence, cannot be sustained under any circumstances.

9. In view of the admitted factual position and the legal provision stated above, on merits, the appeal deserves to be allowed only to the extent of declaring the marriage as nullity and opposed to the provisions of Section 5 of the Hindu Marriage Act, 1955. Accordingly, the appeal is allowed to the above extent. However, there is no order as to costs.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1. The Family Court, Pondicherry.

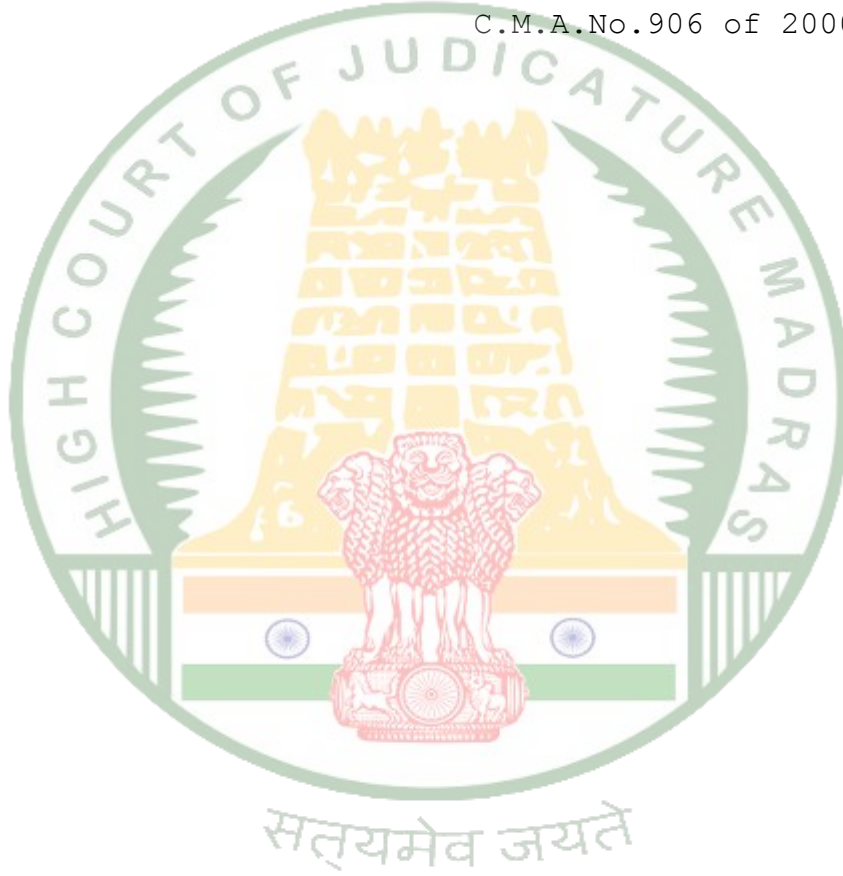
2. The Section Officer, VR Section,  
High Court, Madras.

+ 1 CC To Mr. V.Raghavachari, Advocate SR NO.61096

+ 1 CC To M/s.G.M.Mani Associates, SR NO.60662

C.M.A.No.906 of 2000

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