
(2008) 12 MAD CK 0276

Madras High Court (Madurai Bench)

Case No: S.A. (MD) No. 1230 of 2000

Rev. M.I. Kesari

APPELLANT

Vs

P. Ponmanuvel, P.
Punniamuthu and Rev.
G. Christhudoss

RESPONDENT

Date of Decision: Dec. 22, 2008

Citation: (2008) 12 MAD CK 0276

Hon'ble Judges: A.C. Arumugaperumal Adityan, J

Bench: Single Bench

Advocate: K. Sreekumaran Nair, for the Appellant; F.X. Eugene, for Respondent-1 and B. Tamilnidhi, for Respondent-2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.

The Second Appeal comes under the caption ""for dismissal"" today. The learned Counsel appearing for

the appellant is present and after getting the permission of this Court, the learned Counsel argued his case for the appellant.

2. This Second Appeal has been directed against the decree and judgment in A.S. No. 6 of 1996, on the file of the Court of Additional

Subordinate Judge, Nagercoil (disposed of by the incharge Principal Subordinate Judge, Nagercoil). The first defendant, who has lost his case

before the Courts below, is the appellant herein.

3. The short facts of the plaint sans irrelevant particulars relevant for deciding this Second Appeal are as follows:

The plaintiff is the Deacon and Accountant of the C.S.I. Church, Retnapuram, Kanyakumari District. He was elected as Deacon and Accountant

by the members of the C.S.I. Church, Retnapuram. The C.S.I. Church at Retnapuram is one of the Churches under Kanyakumari Diocese. The

second defendant is a Church worker there. The Kanyakumari Diocese is governed by its own Constitution. On 18.05.1964, the plaintiff married

one "Arulammal Perinba Elsy Rani". The marriage with whom was registered in Kottaram Sub-Registrar Office as Document No. 12 of 1964 and

lived as husband and wife for a period of 9 years. While so, they could not live together as husband and wife due to certain circumstances. Hence,

the plaintiff and his wife decided to dissolve their marriage themselves and on 05.04.1973 registered a divorce deed in the Sub-Registrar Office,

Kottaram as document No. 17 of 1973. As the first marriage of the plaintiff was dissolved, then the plaintiff married Y. Indrani on 12.11.1990.

The marriage was solemnised in Nagercoil C.S.I. Home Church by Rev. Y. Robinson. Following this marriage, the plaintiff's wife gave birth to

two children. Both the children were baptised by the first defendant himself, Rt. Rev. G. Christdhas M.A.B.D., the Bishop of Kanyakumari

Diocese. From the date of marriage till now the plaintiff and his wife are living happily together and leading a Christian life. They continue to be

members of the Retnapuram Church. That being so, to the surprise of the plaintiff, on 21.11.1990, the plaintiff received a letter dated 15.11.1990

from the defendant Rt. Rev. G. Christdhas, the Bishop, stating that the plaintiff has lost his membership of C.S.I. Church with immediate effect,

since the plaintiff had married against the Constitution. The action taken by the defendant cancelling his membership from Retnapuram C.S.I.

Church is ultravires of the Diocesan Constitution and against the Principles of natural justice. This is done only with the wrongful intention of

preventing the plaintiff from taking part in the Church Committee election, which is to be conducted in January 1991. Before taking action, the

plaintiff was not given any opportunity to explain his case. The order issued by the defendant is void abintio and will not bind the plaintiff. The

plaintiff is entitled to continue to be the member of that Church. The allegation in the letter that the plaintiff's marriage is against the Constitution is

not correct. After dissolution of the first marriage, the marriage of the plaintiff was solemnized in the C.S.I. Home Church at Nagercoil. The

children born to them also have been baptised by the first defendant himself. As such, the proceedings of the first defendant is null and void. So,

the plaintiff is entitled to get a decree setting aside the proceeding of the first defendant, dated 15.11.1990. The plaintiff is also entitled to take part

in the Church Committee election. Otherwise, the plaintiff will be put to irreparable loss and injury. Hence, the suit.

4. The first defendant has filed a written statement with the following contentions:

The alleged marriage is against the Constitution of Kanyakumari Diocese, C.S.I. and the alleged divorce is against the law of the land and Church.

The Plaintiff is put to strict proof of the validity of the marriage. Living together and giving baptism will not validate a marriage. When the plaintiff

has acted against the law of the land and the Church, he or his family members cannot be members of the Church. The plaintiff has married against

the law of the land and the Church, so he has lost his membership of the Church. This defendant has taken action when he knew about the illegal

acts committed by the plaintiff. This defendant has no mala fide intention. The plaintiff cannot stealthily enter into the Church and as such he cannot

be a member of the Church. The action of this defendant is valid. The plaintiff is incompetent to take part in the Church activities. The suit is not

maintainable and liable to be dismissed with costs.

5. The second defendant through a memo has adopted the written statement of the first defendant. In his additional written statement, the first

defendant would contend that the plaintiff is not exhausted the remedies available in the Constitution of Kanyakumari Diocese, C.S.I. and filed the

suit and hence, he is automatically removed from the role of Church. The suit is filed with ulterior bad motive. The illegal marriage is void and

hence, he is not entitled to any relief. Hence, the suit is liable to be dismissed.

6. On the above pleadings the learned trial Judge has framed six issues and one additional issues, which were subsequently recast as four issues,

for trial. Before the trial Court the plaintiff has examined himself as P.W.1 besides examining one R.Dason as P.W.2 and exhibited Exs.A1 to A5.

No oral evidence was let in on the side of the defendants. Exs.B1 to B11 were marked on the side of the defendants.

7. After going through the evidence both oral and documentary, the learned trial Judge decreed the suit. Aggrieved by the findings of the learned

trial Judge, the first defendant preferred an appeal in A.S. No. 6/1996, before the learned Additional Subordinate Judge, Nagercoil. The learned

first Appellate Judge, after giving due deliberation to the submissions made by the learned Counsel on both sides and after scanning the evidence

both oral and documentary and after going through the judgment of the learned trial Judge finding no reasons to interfere with the judgment of the

learned trial judge, has dismissed the appeal, thereby confirming the decree and judgment of the learned trial Judge in O.S. No. 1371/1990, on the

file of the Court of Principal District Munsif, Nagercoil, which necessitated the unsuccessful plaintiff before the Courts below to prefer this Second

appeal.

8. The following substantial question of law is involved for determination in this Second Appeal:

Whether the marriage of an Indian Christian has to be necessarily dissolved in accordance with the provisions contained in the Indian Christian

Marriage Act or the Special Marriage Act or can there be a dissolution of the said marriage in any other form?

9. Substantial Question of Law:

The impugned order of the first defendant terminating the membership of the plaintiff from the C.S.I. Church is Ex.A5. It is not specifically stated in

Ex.A5 whether the first marriage of the plaintiff or the second marriage of the plaintiff was performed against the Rules of Constitution, Ex.B5.

Section 18(2) of the Rules of Constitution under Ex.B5 reads as follows:

18. Forfeiture of Membership

Any person who is found to be default on any of the following grounds will ipso facto forfeit his membership:

18.1. One who files cases in the court against the Diocese, Church, Institution or its officers without exhausting all remedies provided in the

Constitution.

18.2. One who marries outside the provision of the C.S.I.

18.3. One who takes baptism outside the provision of the C.S.I.[second baptism].

18.4. One who unauthorizedly takes away the records and/or funds of the Church or Institution.

18.5. One who is in charge of any Institution or Church if fails to settle the account of the Institution or Church during his/her tenure before the

handing over of charge to the Chairperson of the Institution or Church as the case may be.

The bishop shall implement the action taken against such a person through the District Chairman and the Church Worker.

When such a person rectifies his defects and wishes to be admitted in the Church, he shall appeal to the Bishop with an undertaking not to indulge

in any undesirable activities in the Church/Institution. The Bishop then shall restore the membership and direct the Church Committee to implement

it.

As P.W1, the plaintiff, would admit that he had marriage with one "Arulammal Perinbha Elsi Rani", on 18.05.1964 and the said marriage was

registered under Ex.A1 and that the first marriage was subsisting nearly 9 years.

Thereafter, they could not live as husband and wife due to some

extraneous circumstances, which resulted in divorce between them under Ex.A2. It is the case of P.W.1, the plaintiff, that subsequently he got

married one Indirani in the year 1990 as per the Rules of the Constitution and the marriage was solemnised in the C.S.I. Church and the Certificate

of Marriage is Ex.A3 and they were blessed with two children and the baptism ceremony was also conducted by the first defendant under Ex.A4.

But to his surprise, he has received Ex.A5, from D1, terminating him from the membership of C.S.I. Church. A perusal of the Ex.A5 would go to

show that even though the name of the first wife and the second wife of the plaintiff were mentioned in Ex.A5 as to the effect that the copy of the

letter under Ex.A5 was served on the first wife viz., Arulammal Perinbha Elsi Rani, Retnapuram and the second wife Mrs. Indirani, Retnapuram, i

is not specifically stated in the body of the said letter that which marriage was against the Constitution of C.S.I. Church. If the first defendant had

terminated the membership of the plaintiff from the C.S.I. Church on the ground that the first marriage with Arulammal Perinbha Elsi Rani,

Retnapuram was against the Rules of Ex.B5, Constitution, then he would have taken immediate action against the plaintiff soon after Ex.A1,

Registration, regarding the first marriage was effected. But after Ex.A1, according to P.W.1, he lived with his first wife Arulammal Perinbha Elsi

Rani, Retnapuram, for nearly 9 years, but to his surprise no action was taken against the plaintiff by the first defendant, when the alleged illegal

marriage of the plaintiff was subsisting with his first wife Arulammal Perinbha Elsi Rani, Retnapuram. After divorcing her under Ex.A2, the plaintiff

has married Indirani of Retnapuram as his wife, as seen from Ex.A3, Marriage Certificate. It is not the case of the first defendant that Ex.A3

marriage of the plaintiff with Indirani was against the provision of the Constitution of the C.S.I. Church, under Ex.B5. Only after Ex.A3, Marriage,

which took place on 12.11.1990, the first defendant had issued the impugned order of termination, under Ex.A5, on 15.11.1990. Under such

circumstances, the Courts below have concurrently held that the termination of membership of the plaintiff under Ex.A5 by the first defendant is

liable to be set aside and accordingly they set aside the same by granting the relief asked for by the plaintiff under the plaint. In fact, there is

absolutely no question of law involved in this Appeal. Under such circumstances, I do not find any reason to set aside or to interfere with the

judgments of the learned Additional Subordinate Judge, the first Appellate Judge in A.S. No. 6/1996 on the file of the Court of Additional

Subordinate Judge, Nagercoil, which is neither illegal nor improper to warrant any interference from this Court. The Substantial Question of Law,

is answered accordingly.

10. At this juncture, the learned Counsel appearing for the appellant focusing the attention of this Court that even as per the admission of the

plaintiff in his plaint he has entered into an illegal marriage with his first wife, as seen from Ex.A1, which is against the Rule of Constitution, under

Ex.B5, which was subsequently been divorced by him, under Ex.A2, and that the learned Counsel would state that as per the last paragraph of

Rule 18, the plaintiff can rectify his defects by making an appeal before the Bishop in respect of his conduct regarding the first marriage. Under

such circumstances, the Church Committee can recommend the same to the Bishop (D1), who can give his consent for re admittance. So, taking

into consideration the facts of this case, it is left open to the plaintiff to take appropriate measures as contemplated under Rule 18 of Ex.B5, to

make an appeal before the Bishop in respect of his marriage with ""Arulammal Perinbha Elsi Rani"", under Ex.A1, and in such case, the Bishop can

readmit him as a member of C.S.I. Church.

11. In fine, the Second Appeal is dismissed, confirming the decree and judgment of the learned first appellate Judge in A.S. No. 6/1996, on the file

of the Court of Additional Subordinate Judge, Nagercoil, with the above observation. No costs.