

Puthiya Kottal Faizal Musaliar Vs. Marriage Officer, Chalai

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Court : Kerala

Decided On : Aug-05-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Puthiya Kottal Faizal Musaliar

Respondent : Marriage Officer, Chalai

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON MONDAY, THE 5TH DAY OF AUGUST 2013 14TH SRAVANA, 1935 WP(C).No. 7799 of 2013 (Y) ----- PETITIONER(S): ----- PUTHIYA KOTTAL FAIZAL MUSALIAR S/O. THANGAL KUNJU MUSALIAR KAMALUDDIN MUSALIAR 'SITARA', RESIDENTY ROAD, ASARAMOM.P.O. KOLLAM-691002. BY ADVS.SRI.C.UNNIKRISHNAN (KOLLAM) SRI.D.JAYAKRISHNAN RESPONDENT(S): ----- 1.MARRIAGE OFFICER, CHALAI SUB REGISTRAR OFFICE, NEAR KILLIPPALAM BRIDGE KARAMANA.P.O., THIRUVANANTHAPURAM-695002. Addl.2. DI BENEDETTO ROSA MARIA ROMA GIUSEPPA AGED 5 YEARS, D/O.FARINA DI BENEDETTO COTTON HILL HEIGHTS, APT 1M, VAZHUTHACAUD THIRUVANANTHAPURAM -695010 ORIGINALLY FROM 15 ERROL STREET, NORTH MELBOURNE, VIC AUSTRALIA 3051 * ADDL. R2 IS IMPLEADED AS PER ORDER DATED 15 07.2013 IN IA NO.9025/2013. R1 BY SENIOR GOVERNMENT PLEADER JOSEPH GEORGE R2 BY ADV. SRI.NIDHI BALACHANDRAN THIS WRIT

PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-08-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 7799 of 2013 (Y) ----- APPENDIX PETITIONER'(S) EXHIBITS: EXT.P1 TRUE COPY OF APPLICATION UNDER SECTION 5 OF THE SPECIAL MARRIAGE ACT. 1954. EXT.P2 TRUE COPY OF THE RENT DEED DATED 1 5-12 EXT.P3 TRUE COPY OF 'C' FORM SUBMITTED ON 20-11-12 EXT.P4 TRUE COPY ACKNOWLEDGMENT CARD. EXT.P5 TRUE COYP OF THE LETTER NO. SPL 16/13 DATED 8 3-13. EXT.P6 COPY OF ADVICE TO FOREIGNERS PUBLISHED ON THE OFFICIAL WEBSITE OF THE KERALA POLICE AT WWW.KERALAPOLICE.ORG EXT.P7 COPY OF VISA NO.AP0340803. EXT.P8 COPY OF C FORM FOR ARRIVAL DATED 12 11.2011. EXT.P9 COPY OF THE MEDICAL RECORDS. EXT.P10 COPY OF APPLICATION FOR EXTENSION AND TREASURY CHELLAN DATED 29 02.2012. EXT.P11 COPY OF CERTIFICATE OF REGISTRATION AND RESIDENTIAL PERMIT DATED 24 02.2012. EXT.P12 COPY OF VISA NO.VI2884113. EXT.P13 COPY OF C FORM RELEVANT TO EXT.P12. EXT.P14 COPY OF CREDIT CARD STATEMENT ISSUED BY HSBC BANK AUSTRALIA LTD. FOR HSBC PREMIER WORLD MASTER CARD. EXT.P15 COPY OF COMPOSITE STATEMENT DATED 03 11.2012 ISSUED BY THE HSBC BANK, THIRUVANANTHAPURAM BRANCH. EXT.P16 COPIES OF AIRTEL PHONE BILLS OF THE BRIDE DATED 25 10.2012, 27.11.2012, 27.12.2012, 27.01.2013 & 27.04.2013. RESPONDENT'(S) EXHIBITS: NIL //TRUE COPY// PA TO JUDGE BKA P.R.RAMACHANDRA MENON, J.

----- W.P.(c)No.7799 OF 201.-----
- - - - - Dated this the 5th day of August, 2013 JUDGMENT The petitioner has approached this Court with the following prayers : " I. Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondent to solemnise the marriage of the petitioner and his bride as per Ext.P1 application immediately upon the receipt of this Honourable Court's order. II. Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondent to not act ultra vires of the Special Marriage Act, 1954 and Registration Act, 1908 in any way. III. Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondent to not to insist the petitioner and his bride to register

a document that is not compulsorily registrable. IV. Declare that the respondent and like officers have no power to conduct a roving enquiry into the details of the applicants for marriage beyond what is W.P.(C)No.7799/2013 2 prescribed under the Special Marriage Act, 1954. V. Issue such other writ or order as this Honourable Court deems fit and proper in the facts and circumstances of this case." 2. The case of the petitioner is that he proposed to marry the additional 2nd respondent, who was not in the party array earlier when the writ petition was filed and came to be impleaded only pursuant to the order dated 15.07.2013 in I.A.No.9025/2013. The additional second respondent is a citizen belonging to Australia and was residing within the jurisdiction of the first respondent in a rented building. A copy of the rent deed has been produced as Ext.P2. In furtherance to the desire of the petitioner and the additional second respondent to marry each other, Ext.P1 application was submitted under Section 5 of the Special Marriage Act. But the same was not duly acted upon, simply saying that the rent deed was not registered and hence not acceptable. Ext.P5 is the communication issued by the first respondent, also satisfying the requirements to make available the relevant certificate for establishing the identity and residence. This made the W.P.(C)No.7799/2013 3 petitioner to approach this Court by filing the present writ petition.

3. A statement has been filed from the part of the first respondent, referring to some glaring inconsistency/discrepancy with regard to the residence and as to the date of arrival of the additional second respondent in India. It is pointed out that the 'Visa' was issued on 10/09/2012 and her arrival at the Thiruvananthapuram Airport was on 15/09/2012 and this being the position, the additional second respondent could have been a person who was residing in the concerned rented building on the strength of Ext.P2 lease deed executed with effect from 'May 2012'. In the course of further proceedings, the petitioner filed a reply affidavit producing copies of the relevant documents, including the testimonials to substantiate the registration and the residential permit issued as early as on 20.04.2012 vide Ext.P11 and other proceedings, including Bank statements.

4. After going through the pleadings as above and on hearing the submissions made by the learned counsel for the petitioner, this Court finds that the additional

second respondent was very much available in Kerala and as such, the doubts expressed from the part of W.P.(C)No.7799/2013 4 the first respondent with regard to the entries in the 'Visa' and such other records, is rather wrong and unfounded. Since the requirements as to the identity and residence of the additional second respondent stands established, it is for the first respondent to proceed with Ext.P1 application for registration of the marriage under the relevant provisions of law.

5. The remaining question is with regard to the necessity to have Ext.P2 lease deed registered. The learned counsel for the petitioner submits with reference to the law declared by the Apex Court in K.B.Saha and Sons Private Limited v. Development Consultant Limited (2008 (

8) SCC

564) that registration is not at all necessary. Even otherwise, this Court finds that Ext.P2 lease deed is only for a period of '11 months' and the mandate under Section 17(1)(d) of the Registration Act is only in respect of an 'yearly lease' or for a period exceeding one year . This being the position, Ext.P2 is not a deed which comes within the purview of Section 17(1)(d) to have compulsory registration. As such, the consequences by virtue of Section 49(c) of the Registration Act in respect of a document, if not W.P.(C)No.7799/2013 5 registered, which otherwise is compulsorily registrable under the relevant provisions of law, is not attracted to the case in hand. Therefore, non-registration of Ext.P2 lease deed cannot bar the way of the petitioner in seeking for the relief sought for. Accordingly, there will be a direction to the first respondent to proceed with further steps based on Ext.P1 application, subject to satisfaction of the statutory requirements, notwithstanding the expiry of the notice period as per Section 14 of the Special Marriage Act in respect of Ext.P1, in view of the pendency of the proceedings before this Court. The proceedings as above shall be finalised at the earliest, at any rate within 'one month' from the date of receipt of a copy of this judgment. Writ petition is disposed of. P.R.RAMACHANDRA MENON JUDGE sv. W.P.(C)No.7799/2013 6