

M. Jayaraman Vs. M. Santhi

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SooperKanoon Citation : sooperkanoon.com/821131

Court : Chennai

Decided On : Oct-21-1994

Reported in : (1995)1MLJ251

Appellant : M. Jayaraman

Respondent : M. Santhi

Judgement :

ORDER

Sampathkumaran. J.

1. This revision is directed against the order of the learned District Munsif of Thiruvaiyaru dismissing the application I.A. No. 828 of 1988, filed by the revision petitioner herein, who is the plaintiff in O.S. No. 159 of 1987 before him, to recast issue No. 1. Issue No. 1 as it stands is, whether the marriage that took place between the plaintiff (petitioner herein) and the defendant (the respondent herein) is not valid and is against law. The petitioner herein filed I.A. No. 828 of 1988 before the learned District Munsif for recasting the issue as follows:

Whether there was marriage between the plaintiff and the defendant as contended by the defendant and if so whether the said marriage is valid in law.

The learned District Munsif who enquired into the petition held that the petitioner has alleged in the plaint itself that there was a marriage between him and the respondent herein, but, has only alleged that the marriage is not valid and

therefore, it is for the petitioner/plaintiff to prove that the marriage is not valid or illegal. Therefore, the learned District Munsif found that there was no reason for recasting the issue. Therefore, the point for consideration here is whether issue No. 1 requires recasting as prayed for by the revision petitioner herein. The learned Counsel for the petitioner before me contended that he never admitted the marriage as stated, but has taken the plea that the marriage is not valid or legal and it is the respondent who has alleged that the marriage is valid. According to the learned Counsel for the petitioner when he has alleged that there has been no valid marriage, it is for the respondent to prove that there was a valid marriage, since, it will not be possible for the petitioner to prove the negative. Though it is alleged that there was no valid marriage, it appears from the allegations made in para 4 of the plaint that they had undergone the formalities of marriage. But the petitioner only alleges that it is not a valid marriage in law. Therefore, when the petitioner has alleged in the plaint that in fact the formalities of a marriage had taken place and when the petitioner wants to say that the said marriage is not valid due to certain supervening circumstances, then it is for the petitioner/ plaintiff to prove the same. Therefore, I find that the learned District Munsif has rightly rejected his application to recast the issue. I also find that the burden is on the plaintiff to prove that the marriage is not valid. Hence the revision is dismissed with costs.