



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF JANUARY 2023**

**PRESENT**

**THE HON'BLE MR. JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY**

**MISCELLANEOUS FIRST APPEAL NO.1493 OF 2015 (MC)**

**BETWEEN:**

1. SMT. SHEELA  
W/O MANJUNATH  
D/O BASAVARAJU  
AGED ABOUT 20 YEARS  
MARASANAHALLI, MALUR HOBLI  
CHENNAPATNA TALUK  
MANDYA DISTRICT-571501.

...APPELLANT

(BY SRI. SUNIL S. RAO, ADV., (ABSENT))

**AND:**

1. SRI. MANJUNATH  
S/O H THIMMEGOWDA  
AGED ABOUT 36 YEARS  
NEAR MUDUGERE PLANTATION  
BANGALORE MYSORE ROAD  
MALUR HOBLI  
CHENNAPATNA TALUK  
MANDYA DISTRICT.

...RESPONDENT

(BY SMT. MANJULA P V, ADV., (ABSENT))

THIS MFA IS FILED U/S 28 OF HINDU MARRIAGE ACT  
R/W ON 19(1) OF FC ACT, AGAINST THE JUDGMENT AND  
DECREE DATED:8.1.2015 PASSED IN M.C.NO.69/2012 ON THE



FILE OF THE SENIOR CIVIL JUDGE, JMFC, CHANNAPATTANA, RAMANAGAR DISTRICT, ALLOWING THE PETITION FILED U/SEC 11(1)(1A) OF HINDU MARRIAGE ACT.

THIS APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal under Section 28(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') has been filed against judgment and decree dated 08.01.2005 passed by the Trial Court in M.C.No.69/2012 by which the petition filed by the respondent under Section 11 of the Act seeking dissolution of the marriage has been dismissed.

2. Facts giving rise to filing of this appeal briefly stated are that the marriage between the parties was solemnized on 15.06.2012. It is the case of the respondent that after the marriage, he discovered that the date of birth of the appellant is 06.09.1995 and therefore, she was minor at the time of marriage. The



respondent therefore, filed a petition on 30.08.2012 under Section 11 of the Act seeking a declaration that the marriage is a nullity on the ground that the appellant was minor at the time of marriage. The appellant filed statement of objections in which factum of marriage was admitted. However, all other contentions in the petition were denied.

3. The Family Court, on the basis of pleadings of parties, framed issues and recorded the evidence. The respondent examined himself as PW-1 and marked documents namely Ex.P1 to Ex.P3. The appellant did not lead any evidence. The Family Court vide judgment dated 08.01.2005 *inter alia* held that the date of birth of the appellant is 06.09.1995 and the marriage was taken place on 15.08.2012. It was therefore found that on the date of marriage, the appellant was aged 16 years 11 months 8 days and had not completed 18 years as



prescribed under Section 5(iii) of the Act. The Family Court therefore concluded that the marriage is void under Section 11 of the Act and declared the marriage as null and void. In the aforesaid factual background, this appeal has been filed.

4. We have considered the submission made by the learned counsel for the appellant and have perused the record. From the uncontroverted evidence on record, specially birth certificate of the appellant namely Ex.P1, it is evident that the date of birth of appellant is 06.09.1995. Thus, on the date of her marriage i.e. on 15.08.2012, the appellant had not attained the age of 18 years. Section 5 of the Act prescribes the conditions for a Hindu marriage which requires the following conditions to be fulfilled:

**Section 5: Conditions for a Hindu marriage** - *A marriage may be solemnized*



*between any two Hindus, if the following conditions are fulfilled, namely:*

*(i) neither party has a spouse living at the time of the marriage;*

*1/(ii) at the time of the marriage, neither party -*

*(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*

*(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*

*(c) has been subject to recurrent attacks of insanity;*

*(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;*

*(iv) the parties are not within the degrees of prohibited relationship unless the custom or*



*usage governing each of them permits of a marriage between the two;*

*(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two".*

5. Section 11 of the Act deals with void marriages which provides that any marriage solemnized after the commencement of the Act, shall be void and the Court may on the petition presented by either of the parties thereto, declare the same to be a nullity if it contravenes the provisions of Clauses (i), (iv) and (v) of Section 5 of the Act. Thus, it is evident that clause (iii) of Section 5 of the Act which provides that the bride has to be 18 years of age at the time of marriage, has been omitted from the purview of Section 11 of the Act. Thus, Section 11 of the Act has no application to the fact situation of



the case. The Trial Court has however failed to appreciate the aforesaid aspect of the matter.

For the aforementioned reasons, the judgment dated 08.01.2015 passed by the Trial Court in M.C. No.69/2012 is set aside.

In the result, the appeal is allowed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

RV