



A.S.No. 340 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on :	26.03.2024
Pronounced on :	07.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

A.S.No. 340 of 2016
and
C.M.P.No.7518 of 2016

P. Jayachandran

... Appellant/Defendant

Vs.

1. A. Yesuranthinam (Died)

2. Susana Thenmozhi

3. Inbaselvan

Sole Respondent died,
R2 & R3 are brought on record as LR's of
deceased sole respondent,
vide order of Court dated 11.12.2023
made in C.M.P.Nos. 25150, 25152,
& 25156 of 2023 in A.S.No. 340 of 2016

...Respondent/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of Code of Civil Procedure to set aside the judgment and Decree passed in O.S.No. 33 of 2013 dated 12.02.2016, on the file of the II Additional District and Session Judge, Vellore at Ranipet and thereby to allow the appeal and dismiss the suit O.S.No.33 of 2013 on the file of the II Additional District and Session Judge, Vellore at Ranipet.



WEB COPY



A.S.No. 340 of 2016

For Appellant : Mr. C. Shankar

For R1 : Died

For R2 & R3 : Mr.G.Jeremiah

JUDGMENT

The defeated defendants is the Appellant herein. For the sake of convenience, the parties are referred as per their litigative status before the Trial Court.

The brief facts leading to filing of the Appeal Suit as under:

2(a). The first Respondent herein is the Plaintiff in O.S.No.33 of 2013. He filed a suit for declaration of title of the Plaintiff over the suit property and for directing the Defendant to deliver possession of the suit property and restrained the Defendant from alienating the suit property.

2(b). The Plaintiff (Respondent herein) is the father of one Y.Margarette Arulmozhi and she was employed as a Head Mistress in the Panchayat Union School, Nagavedu, Arakkonam Taluk. She lived together with one P.Jayachandran (Defendant), who is already married person. Since Jayachandran's marriage with one Stella was not dissolved according to the Indian Divorce Act, Jayachandran and MargaretteArulmozhi were living together without any marriage.

2(c). Jayachandan had executed a settlement deed in favour of the



A.S.No. 340 of 2016

daughter of the Plaintiff under Ex.A2 dated 09.08.2010 and thereafter she died on 24.01.2013. Under Ex.A3 dated 02.04.2013, the settlement deed executed by Jayachandran was unilaterally cancelled, after the death of the beneficiary. Since the Plaintiff viz. Yesurathinam is the father, as per provision of the Indian Succession Act, he is the sole legal heir of the deceased Margarete Arulmozhi and prayed to decree the suit.

3. The Defendant filed written statement contending that Jayachandran and Margarete Arulmozhi were lived as husband and wife and based upon their relationship Arulmozhi nominated him for the special provident fund cum gratuity and for family pension with school authorities. The certified copies of provident fund and other things have been filed before the Trial Court as Ex.B.17 to Ex.B.21. Based upon the same, on her death, the pension has been given to the Defendant, as per the proceedings of the Assistant Elementary Education Officer, Nemili under Ex.B.24 thereby their relationship was recognized as husband and wife and prayed for dismissal of the suit.

4. After trial, the learned Trial Judge, has come to conclusion that the alleged marriage between the defendant and Margarete Arulmozhi was not



A.S.No. 340 of 2016

proved in the manner known to law. Further in view of the admission of

WEB COPY

D.W.1 in the witness box that there was no dissolution of marriage between Stella and Jayachandran and hence 'living relationship' (between Jayachandran and Margarete Arulmozhi) was not converted into legitimate marriage. Therefore, the Plaintiff, who is the father of the deceased Margarete Arulmozhi by virtue of Ex.A2/settlement deed entitled to decree of title.

5. The learned counsel for the Appellant contended that the Trial Court has committed error in not looking into the fact that Margerette Arulmozhi during her lifetime nominated the Appellant/Defendant as her nominee in service records as her husband and the Plaintiff/Respondent has not objected to such nomination created by the Margerette Arulmozhi (now deceased) Prior to the filing of the suit, the Respondent/Plaintiff admitted in Ex.B15 which is a "Thanks giving ceremony invitation" wherein the said Margerette Arulmozhi is described as wife of Appellant/Defendant. Further contended that the lower court failed to appreciate **Ex. A23** in proper manner and under Section 5 of the Indian Christian Marriage Act, no where provides that marriage amongst Indian Christians shall be proved only in the manner as stated in the Section 5 of the Act.



WEB COPY

6. The learned counsel for the respondent/plaintiff made submission in support of the judgment of the Trial Court.

7. The point for determination in this Appeal are as follows:-

1. Whether the Margerette Arulmozhi is the wife of the defendant Jayachandran as pleaded by him?

2. Whether the alleged “living in relationship” of the defendant with the Margerette Arulmozhi rip into legal status as husband of Margerette Arulmozhi?

3. Whether the alleged marriage of the defendant with the Margerette Arulmozhi during subsistences of the first marriage with Stella is valid or legally sustainable?

4. Whether the Plaintiff/Respondent is the legal heir of the deceased Margerette Arulmozhi under Indian Succession Act, 1925?

5. Whether the Plaintiff/Respondent is entitled for declaration of title to the suit property as prayed for?

8. Heard both sides.

9. Before the Trial Court, Plaintiff is the (father of the Margerette Arulmozhi) examined himself as P.W.1 and marked Ex.A1 to Ex.A7. The



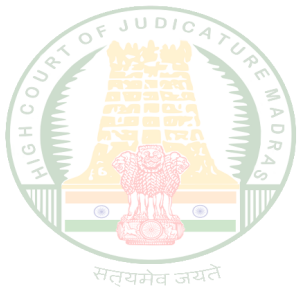
A.S.No. 340 of 2016

defendant is examined as D.W.1 and marked Ex.B1 to B25 and D.W.2 was also examined.

10(a). It is admitted fact that the plaintiff A.Yesurathinam is the father of the said Margerette Arulmozhi and she was employed as a Headmistress in the Panchayat Union school, Nagavedu, Arakkonam Taluk.

10(b). The defendant P. Jayachandran was married to one Stella and had 5 children through his wife Stella. The Margerette Arulmozhi died on 24.01.2013.

10(c). The suit property is housesite allotted by the Tamil Nadu Housing Board. As per Ex.A1, the sale deed was executed by the Tamil Nadu Housing Board in favour of the defendant P. Jayachandran on 12.01.2010. Under Ex.A2, the defendant had executed the settlement deed in favour of the Margerette Arulmozhi on 09.08.2010 describing her as his wife. Under Ex.A3, I find on 02.04.2013 the defendant P. Jayachandran has unilaterally canceled the settlement deed. It remains to be stated that the owner of the property namely Margerette Arulmozhi died Ex.A3 and hence the defendant had unilaterally canceled the settlement deed is after the death of the owner and it has no legal basis. Besides, it is settled law that unilateral cancellation of settlement deed is in impermissible in law.



A.S.No. 340 of 2016

11. Records reveals that Ex.A4, Ex.A7, Ex.B23, Ex.B24 and Ex.B25 are the proceedings of the Assistant Elementary Educational Officer whereby the terminal benefits are been given to the defendant after the death of said Margerette Arulmozhi. So Ex.B17 to Ex.B21 relating to nomination for the Special Provident Fund cum Gratuity Scheme, nomination for the Family Pension Scheme for the Margerette Arulmozhi., wherein the defendant was nominated the beneficiary shown as husband of said Margerette Arulmozhi. As per the Ex.B4 death certificate, the said Margerette Arulmozhi died on 31.01.2013.

12. The learned counsel appearing for the appellant would contend that

i. The real facts are that the defendant divorced his first wife Stella under the customary ways and keep his two children with him and the said Stella settled with remaining two children in the year 2000. After the customary divorce between the defendant and his first wife Stella, the plaintiff's daughter Y.Margarette Arulmozhi expressed her love affair with the defendant. Because, the said Y.MargaretteArulmozhi was also working as a teacher in the same school along with the defendant.

ii. The defendant applied for own house from the TNHB, Arakkonam



A.S.No. 340 of 2016

on 11.10.1989 itself, i.e. very much long before the marriage between the defendant and the said Y.Margarette Arulmozhi. Finally the defendant was allotted to LIG house on 06.06.1990 and the defendant alone making the monthly installments to the concern department. At that time there is no relationship between the defendant and the said Y.Margarette Arulmozhi in any way and the defendant married the said Y.Margarette Arulmozhi only on 07.10.2001.

iii. During the life time of the defendant's wife, to give a security to the said Y.Margarette Arulmozhi, the defendant executed a registered settlement deed in favour of her as per the registered settlement deed dated 09.08.2010 due to love and affection. In fact the settlement deed can be executed between the family members alone. Hence, the defendant executed the said settlement deed to his wife and the same was recognize by the concern authority after due verification. After the settlement deed dated 09.08.2010 also, the defendant not willing to accept the suit property and she refused to take possession of the suit property as well as to effect mutation in her name. She openly told that she was not married the defendant for want of property and told that the suit property should go to the defendant's children after the demise of the defendant and his wife Y.Margarette Arulmozhi. She further told that the defendant should cancel the settlement deed and the same is her



A.S.No. 340 of 2016

life ambition. Due to the above said reasons, the settlement deed dated

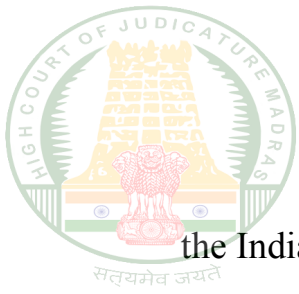
09.08.2010 was not acted upon and the defendant cancels the said deed by

way of registration of cancellation deed dated 02.04.2013 to give honour to

his wife Y.Margarette Arulmozhi.

iv. Hence, the mutation was not effected and till this date the property tax, water tax and EB stands in the name of the defendant.

v. Further contend that the Trial Court has not formulated any issue as to whether Ex.A2 Settlement Deed in favour of Margarrete Arulmozhi by Jayachandran dated 09.08.2010 was acted upon or not and further would contend that as per Section 122 of the Transfer of Property Act, 1882, the document after its execution can be acted upon and possession ought to have been handed over to the settlee and he must have enjoyed the property by mutation of revenue records and relied upon the judgment of the Hon'ble Supreme Court. Further contended that during the pendency of appeal the father of Margarrete Arulmozhi died and in view of the nomination effect by the deceased Margarrete Arulmozhi under Ex.B23, Ex.B24 & Ex.B25 is getting pension and as per Ex.A3, he has cancelled the settlement deed dated 02.04.2013 and therefore, the Trial Court has committed an error in not treating the appellant as a husband of the deceased and treated the appellant as only living in relationship only and 'not as husband' by citing Section 16 of



the Indian Divorce Act.

WEB COPY

16. Decrees for dissolution to be nisi- Every decree for a dissolution of marriage made by a High Court, shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order from time to time, directs.

60. On what conditions marriages of Indian Christians may be certified.

Every Marriage between (Indian) Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:-

- (1) the age of the man intending to be married (shall not be under (twenty-one years)), and the age of the women intending to be married (shall not be under (eighteen Year));*
- (2) neither of the person intending to be married shall have a wife or husband still living;*
- (3) in the presence of the person licensed under Section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other--*



WEB COPY

13(a). The records reveals the fact that the allotment of the house site and construction of the house in the name of defendant under Ex. A1 and settlement of the said schedule property in favour of the Margerette Arulmozhi by the Defendant/Appellant P.Jayachandran under Ex.A2 are not in dispute. The said Margerette Arulmozhi died on 24.01.2013.

13(b). Now that the plaintiff who is father of said Margerette Arulmozhi filed the present suit seeking declaration his title over the suit property and to deliver the possession of the property by virtue of the Ex.A2 settlement deed executed by the Appellant/Defendant in favour of his daughter Margerette Arulmozhi and on her death under Section 42 of the Indian Succession Act, 1925, the father is entitled to succeed the property of the deceased daughter.

13(c). In the pleadings as well as in his evidence as P.W.1, he has raised the plea that his daughter was in “living in relationship” with the defendant but not married to the defendant. On the contrary, both in the written statement as well as in D.W.1, the defendant has raised the contention that he had divorced his first wife Stella by customary divorce, married the said Margerette Arulmozhi and lived as husband and wife. Out of love and affection, he had executed settlement deed under Ex. A2 and both



A.S.No. 340 of 2016

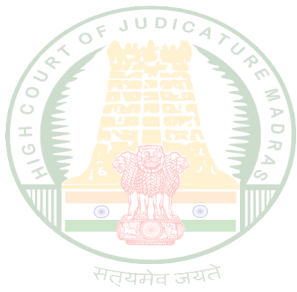
of them are residing there and in the service records, his name has been nominated by her during her lifetime and relied upon Ex.B17 to B25.

13(d). The “plea of customary divorce under Indian Christian law”, the defendant has raised his specific plea in his written statement as well as in D.W.1 that by 'customary practice' he had divorced his wife Stella and five children are living separately after the said customary divorce.

14. The learned counsel for the appellant objected the same point on the ground that under Section 5 of the Indian Christian Marriage Act does not provide any such condition that marriage among Indian Christian shall be proved only in the manner as stated in Section 5 of the Act.

Moot Point:

15. As extracted above, the Section 60 of the Indian Christian Marriage Act contemplates that one of the pre-conditions to contract the marriage under the said Act is; one of the party should not have the spouse living on the date of the proposed marriage. Whether the customary divorce as pleaded by the defendant can be accepted under Section 10 of the Indian divorce Act is the moot point that has to be decided in this Appeal.



A.S.No. 340 of 2016

16. On the admitted factual matrix, D.W.1 both in his written statement and his evidence admitted that he is already married, wife is alive and had five children. However come forward with the oral plea that there was a 'customary divorce' whereby he had divorced his wife Stella. On a comprehensive study of the Section 10 of the Indian divorce Act, the same does not prevails for customary form of divorce as contemplated under the Hindu Marriage Act. The distinction between the two acts namely Hindu Marriage Act and Indian Divorce Act are under the Hindu law caste system prevails however under the Christian Religion, the caste system was not recognized under the Christian law. In the absence of any such practice namely customary form of divorce being recognized under the Indian Divorce Act, the oral plea of the D.W.1 cannot be accepted. He has not produced any document to show that he had divorced his wife Stella and hence he is not eligible for remarriage with the said Margerette Arulmozhi. In the absence of any evidence and in view of the legal position that customary form of divorce is impermissible under the Indian Divorce Act, this court is of the considered view that said plea of the Appellant/defendant cannot be countenanced.

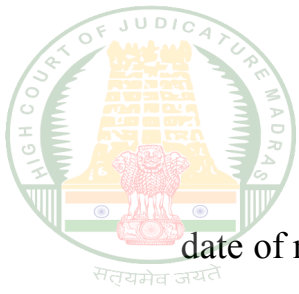
17. In view of the clear legal position and also in the absence of any form of positive evidence that he was divorced his wife Stella, the alleged



A.S.No. 340 of 2016

relationship (living in relationship of defendant Jayachandran with the Margerette Arulmozhi) cannot be loom large into the legal status of husband and wife. It may be a fact that both the defendant Jayachandran and Margerette Arulmozhi could have lived together. However presumption of law as contemplated under Section 114 of the Indian Evidence Act cannot come to rescue of the defendant. In view of the admitted position that on the date of alleged marriage by the defendant with the Margerette Arulmozhi, the defendant first marriage is in existence and his wife is alive (i.e., Stella is alive) and therefore he cannot contract another marriage. Indian Christian Marriage Act recognizes the principle of monogamy which in the present case could apply in all force.

18. Hence on the above factual matrix, the defendant Jayachandran is having a living spouse and hence under the Indian Christian Marriage Act which recognize the Principle of monogamy comes into operation and hence at no stretch of imagination Margerette Arulmozhi (daughter of the plaintiff) can be treated as his wife. Hence I have no hesitation to hold that the plea of customary divorce is impermissible in the Indian Divorce Act and under Section 60 of the Indian Christian Marriage Act envisages as one of the preconditions for valid marriage amount Christian Adult that on the proposed



date of marriage neither of the party shall have living spouse.

WEB COPY

19. On the above analysis, I find that findings alleged that the live in relationship between the parties cannot loom large into the legal status of the husband and wife and therefore the plea of the Appellant/Defendant is stands negative.

20(a). The learned counsel for the appellant draw my attention to the evidence of D.W.2 and Ex.B1 and Ex.B17 to Ex.B23, the D.W.1 Jayachandran admitted that he has not divorced his first wife in any court of law and there is no record for the same but he could contended that he divorced her customarily. The said plea has been discussed in detail in the preceding paragraph and also stands negative for the reason stated therein.

20(b). The D.W.2 is the Assistant Educational Officer who could depose about the nomination given by Margerette Arulmozhi during her life time in her service records, wherein she had nominated the defendant in service records under the category of her husband to receive the terminal benefits that was given in the year 2009.

21. It is well settled law that nomination in service records is only



A.S.No. 340 of 2016

for the purpose to receive the terminal benefits by the person and merely because that person nominated as a nominee he cannot held that the nominee alone is the legal heir of the said person. No doubt it is true in the Ex.A2 the said Margerette Arulmozhi is described as his wife. But, merely because such description she cannot claim herself as legally wedded wife of the defendant. Since the same is nothing but self-declaration.

22. In view of the above discussion, I hold that though the defendant raised the plea of customary divorce, but no documentary proof for the same was filed. Besides under the Indian Christian Marriage Act such a plea of “customary divorce is not permitted” and divorce between the Christian has to be effected only on certain grounds that has been described under Section 10 of the Indian Divorce Act. Therefore alleged marriage of the Appellant/Defendant with the Margerette Arulmozhi is during the subsisting of the valid marriage with the Stella which was not dissolved by the Competent Court under the Indian divorce Act. Therefore a mere statement in the service records for nomination will not cloth the Appellant/Defendant as her husband. In view of the Ex.A2 Settlement deed executed by Appellant/Defendant in favour of the Margerette Arulmozhi, she become absolute owner of the suit property. Under Ex.B4 which is seen that



A.S.No. 340 of 2016

the said Margette Arulmozhi died on 31.01.2013 and living behind her father.

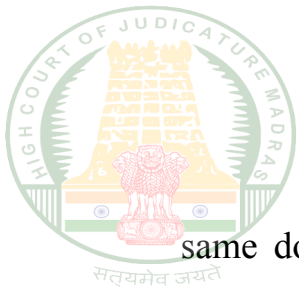
WEB COPY

Section 42 and 45 of Indian Succession Act:-

42. Where intestate's father living.-If the intestate's father is living, he shall succeed to the property. 45. Where intestate's father dead and his mother and children of any deceased brother or sister living. -If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

As per the Section 42 of Indian Succession Act, the plaintiff being the father is entitled to succeed the suit property and thus the order passed by the learned District judge is found to be in order and I find no reason to take different view on the evidence available on record.

23. Though under Ex.B15 “Thanks giving ceremony invitation” the plaintiff had printed Margette Arulmozhi as a wife of the Appellant. The



A.S.No. 340 of 2016

same does not enlarge and cloth the legal status of the defendant, for the discussion stated in the supra. The Ex. B15 and Ex.B17 cannot operate against the legal position as stated in Indian Christians Act and Indian Divorce Act and therefore the said contention stands negative in view of the legal position.

24. The learned counsel for the Appellant also stated that the Plaintiff/Respondent being the father has not objected the nomination created by the Margette Arulmozhi at any point of time during her lifetime and under Ex.A23 the plaintiff himself admitted the defendant is the husband of Margette Arulmozhi and stood as a witness in the receipt dated 21.01.2023 for the settlement deed as stated supra. The legal position being enumerated in the presiding paragraphs the act of the parties cannot be loom large as against the legal consequences of the statutory provisions contained in Indian Christian Marriage Act and Indian Divorce Act. In this view of the matter all the points raised by the Appellant/Defendant stands negative and all are answered in negation against the Appellant and in favour of the Respondent/Plaintiff.

25. Mr.G.Jeremiah, the learned counsel for the respondents draw



A.S.No. 340 of 2016

my attention to Ex. A2 gift deed and also stated that as per Section 122 of the

WEB COPY

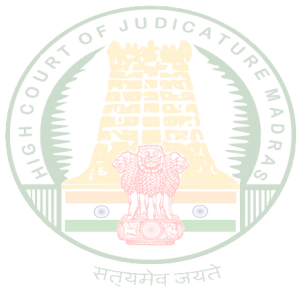
Transfer of property Act, the possession has been handed over to the beneficiaries under the Settlement deed and said Margette Arulmozhi was residing there and he had also received the benefits. Hence once the Ex.A2 settlement deed executed by the defendant in favour of the Margette Arulmozhi is acted upon and the possession being given to the beneficiaries and beneficiaries had benefits of residing over there and hence the gift deed in all form comes to force in fullest form and on her death as a sole surviving legal heir as per Section 42 of the Indian Succession Act he is entitled for declaration relief is found to have force.

26. Before departing, this Court finds that the term “live-in” relationship or marriage like relationship are often interchanged or misused.

26(a) The Hon'ble Supreme Court in *Indra Sarma vs. V.K.V.Sarma* has observed as under -

2. Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

23 (a) Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife.



WEB COPY

(b) Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae' which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally.

(c) Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other.

30. Entering into a marriage, therefore, either through the Hindu Marriage Act or the Special Marriage Act or any other Personal Law, applicable to the parties, is entering into a relationship of "public significance", since marriage being a social institution, many rights and liabilities flow out of that legal relationship. The concept of marriage as "civil right" has been recognised by various courts all over the world.

31..... the concept of "marriage and marital relationship" to indicate that the law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or defacto relationship.



WEB COPY

26(b) “Marital relationship” and “Marital obligations” has also been discussed by the Hon'ble Supreme Court in the *Indra Sarma's case* and held that that in respect of definition of Section 2(f) of the Domestic Violence Act, the Apex Court has observed that relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

26(c) Distinction between the “relationship in the nature of marriage” and “marital relationship” has to be noted first. “Relationship of marriage” continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But “live-in-relationship” is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end.

27. Coming to the case in hand, the status of the appellant in this case



A.S.No. 340 of 2016

is that admittedly he entered into a live-in relationship with Arulmozhi (now deceased) knowing that he is a married man with wife and five children.

Where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and hence, the relationship between the appellant and Arulmozhi (now deceased) was not a relationship in the nature of a marriage and the status of the said person is that of a concubine. A “concubine” cannot maintain a relationship in the “nature of marriage” because such a relationship will not have exclusivity and will not be monogamous in character and consequently he cannot enter into relationship in the nature of a marriage.

28. This court has observed that by entering into such a relationship, the appellant has committed an intentional tort, namely interference in the marital relationship with intentionally alienating him from his family namely his wife and children and thus, the Hon'ble Supreme Court has held that all live-in relationships are not relationships in the nature of marriage.

29(a) In the judgment of the Hon'ble Supreme Court in *D.Velusamy vs. D.Patchaiammal reported in AIR 2011 SC 479*, it has been observed



A.S.No. 340 of 2016

that when a wife is deserted, in most countries, the law provides for maintenance to her by her husband which is called “alimony”. In USA, the expression 'palimony' was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him and further, observed that a relationship in the nature of marriage is akin to a common law marriage.

29(b) Common law marriages require that although not being formally married (a) the couple must hold themselves out to society as being akin to spouses (b) they must be of legal age to marry (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

29(c) Following the ratio laid down in the judgments of the Hon'ble Supreme Court in the case of *Lata Singh versus state of UP and another reported in 2006 (5) SCC 475* and *S.Kushboo vs. Kanniammal reported in 2010 (5) SCC 600*, if the petitioners are major and otherwise competent to enter into contract, no fetter can be placed upon the choice of person with



whom she is to stay nor anyone can restrict her.

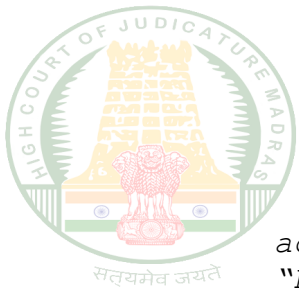
WEB COPY

30. This Court finds that the term “otherwise competent to enter into contract of marriage” is to an age, as prescribed in respective personal law as to majority, adult and be unmarried or should not have a spouse living during the time of the said period of a “live-in” relationship. In the instant case, admittedly Stella wife of the appellant was alive with the children and in the absence of any divorce as per the codified personal law for Christians to be obtained by the appellant and father, his association with Arulmozhi (now deceased) cannot be termed as a “live-in” relationship, as projected by the learned counsel for the appellant. In the absence of any codified law in this regard, they cannot seek any succession or inheritance of the property.

30(a) It remains to be stated that the Division Bench of the Allahabad High Court in Criminal Miscellaneous Writ Petition No.3310 of 2023 has held as follows -

21. However, in Muslim law, no recognition can be given to sex outside marriage. “Zina” which has been defined as any sexual intercourse except that between husband and wife includes both extramarital sex and premarital sex and is often translated as fornication in English. Such premarital sex is not permissible in Islam.

In fact any sexual, lustful, affectionate

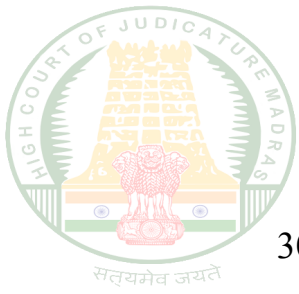


A.S.No. 340 of 2016

WEB COPY

acts such as kissing, touching staring etc are "Haram" in Islam before marriage because these are considered parts of "Zina" which may lead to actual "Zina" itself.

The punishment for such offence according to Quran (chapter 24) is hundred lashes for the unmarried male and female who commit fornication together with the punishment prescribed by the "Sunnah" for the married male and female that is stoning to death.



A.S.No. 340 of 2016

30(b) The Lucknow Bench of Allahabad High Court has held that a

WEB COPY follower of Islam cannot be in a live-in relationship, particularly if his spouse is alive. “ The Islamic tenets do not permit live-in-relationship during the subsisting marriage. The position may be different if the two persons are unmarried and the parties being adults choose to lead their lives in a way of their own. This Court has noted that, of late, adults who indulge in extramarital relationship are labelling it as “live-in”relationship, which is misnomer and it is to be deprecated.

31. Pending appeal, original plaintiff died and hence as per Section 45 of the Indian Succession Act, newly impleaded parties are entitled for such a relief. Consequently the judgment and decree in O.S.No. 33 of 2013 dated 12.02.2016 is hereby confirmed.

32. In the result, the appeal suit is dismissed. There shall be no order as to costs.

07.06.2024

ns1

Internet : Yes

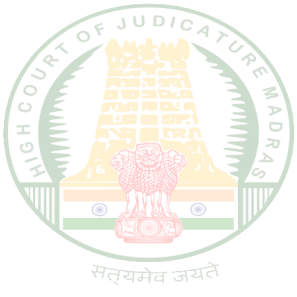
Index: Yes/No

Neutral Citation: Yes/No



WEB COPY To

1. The II Additional District and Session Judge,
Vellore, Ranipet.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY

A.S.No. 340 of 2016

RMT.TEEKAA RAMAN, J.,
nsl/rgr

Judgment made in

A.S.No. 340 of 2016
and C.M.P.No.7518 of 2016

07.06.2024