C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

MAT.APPEAL NO. 327 OF 2022

AGAINST THE JUDGMENT IN OP 385/2018 OF FAMILY COURT, KALPETTA DATED 5.1.2022

APPELLANT/RESPONDENT:

JOSEPH A.U,

[redacted]

BY ADVS.
KRISHNA PRASAD. S
SINDHU.S.KAMATH
SWAPNA.S.K
ROHINI NAIR
SURAJ KUMAR.D.

RESPONDENT/PETITIONER:

PRINCY P.J,

[redacted]

BY ADV M.A.ZOHRA

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

J U D G M E N T

Dated this the 18th day of January, 2024

C. Pratheep Kumar, J.

This appeal is filed by the respondent in O.P. No.385 of 2018 on the file of Family Court, Kalpetta, against the judgment dated 5.1.2022, directing him to pay a sum of Rs.3,35,564/- with interest at the rate of 6% per annum to the petitioner.

2. According to the respondent, the appellant married her on 16.3.2016 as per the provisions of Special Marriage Act, 1954. It was the second marriage of the appellant and the third marriage of the respondent. Two weeks after the marriage, the respondent returned to Canada to continue her overseas employment. Thereafter she had arranged a student Visa to the appellant in Vancouver Island University. A sum of Rs.22 Lakhs was required for the completion of the Masters Degree of the appellant. The appellant arranged only a sum of Rs.7 Lakhs by availing a loan from Syndicate Bank, Mananthavady Branch and balance amount of Rs.15 Lakhs and flight charges of Rs.1,85,000/-

was met by the respondent. Accordingly, the appellant went to Canada in August, 2016 and they lived together there for about three weeks.

3. Subsequently, the appellant joined the University to complete his education. Thereafter the marital relationship between them strained. It is also alleged that the appellant appropriated her 15 sovereigns of gold ornaments. He had repaid only a sum of Rs.8 Lakhs. In the OP she prayed for permitting her to realise a sum of Rs.3,30,000/- being the value of 15 sovereigns of gold and another sum of Rs.3,33,,654/- being the amount spent for education of the appellant.

4. The appellant denied the claim of the respondent. On the side of the respondent, PWs 1 and 2 were examined and Exhibits A1 to A10 were marked. On the side of the appellant, RW1 was examined and Exhibits B1 to B10 were marked. After appreciating the available evidence, the learned trial Judge rejected the claim for the price of the gold ornaments, but allowed the respondent to realise a sum of Rs.3,35,564/- along with interest at the rate of 6% per annum.

5. The main contention raised by the appellant is that the marriage between the appellant and the respondent was a void one as at the time of the alleged marriage, the earlier marriage of the respondent was not

dissolved. Therefore, according to the appellant, the subject matter in dispute does not come within the purview of Section 7 of the Family Courts' Act and as such the Family Court has no jurisdiction to entertain the OP. Therefore, the learned counsel for the appellant would contend that on that ground itself, the appeal is liable to be dismissed.

6. Now, the point that arise for consideration is the following:

> Whether the Family Court lacks jurisdiction to entertain a suit or proceedings between the parties to a void marriage, with respect to the property of the parties or of either of them?

7. As per Explanation (c) to Section 7 (1) of the Family Courts Act 1984, a Family Court has jurisdiction to entertain a suit or proceedings between the parties to a marriage with respect to the property of the parties or of either of them.

8. In the instant case, when the marriage between the appellant and the respondent was solemnised as per the provisions of Special Marriage Act, on 16.3.2016, the earlier marriage of the respondent was subsisting and her spouse was also living. From Exhibit B2, it is revealed that the earlier marriage of respondent with Anoop Thomas was dissolved only on

18.7.2017. Therefore, it is clear that on 16.3.2016, when the respondent married the appellant, her spouse was living and as such, the marriage held on 16.3.2016 was void in view of Section 4 (a) read with Section 24 (1)(i) of the Special Marriage Act, 1954.

9. Now, the question to be considered is *whether the dispute between the parties to a void marriage is to be tried by the Family Court or by the ordinary civil court?* It was argued by the learned counsel for the appellant that since it is a void marriage, it could be treated as 'no marriage' and the parties to such a marriage can ignore the void marriage. Therefore, it was contended that the remedy is to approach the ordinary civil court and not the Family Court.

10. Section 24(1)(i) of the Special Marriage Act provides that if at the time of marriage if either party had a spouse living, the said marriage shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity.

11. Explanation (a) to Section 7(1) of the Family Court's Act 1984 states as follows:

> *Explanation-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature,*

namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

12. Therefore, from a conjoined reading of Section 24 (1)(i) of Special Marriage Act and Explanation (a) to Section 7(1) of the Family Courts Act, it is evident that a marriage which is void, as defined under Section 24 of the Special Marriage Act, will remain valid for all practical purposes, unless it is annulled in a suit or proceedings before the Family Court. In other words, from the above provisions, it can also be safely concluded that even the parties to a void marriage can approach the Family Court for redressing their grievance and as such this point is liable to be answered in the negative.

13. It was further contended by the learned counsel for the appellant that the money seen transferred by the respondent to the Scotia Bank of Canada was misappropriated by the respondent by obtaining the password of the appellant. Though such a contention was raised, the appellant could not substantiate the same by adducing any reliable

evidence. On the other hand, based on reliable documentary evidence, (Exhibit A1 to A8), the trial Court found that the respondent spent 31,446 Canadian Dollars equivalent to Indian currency worth Rs.16,17,614.87 for the appellant and out of which, the appellant had repaid only Rupees Eight Lakhs and as such the respondent is entitled to get the balance amount of Rs.8,17,614.87. Since the respondent has claimed only Rs.3,35,564/- on that account, the decree was limited to that amount.

14. At the time of evidence, the appellant also conceded that when he went to Canada along with the respondent, he had only about Rupees Ten Lakhs with him including the loan availed by him. It is also revealed that for the completion of Education of the appellant in Canada, about Rs.22 lakhs was spent. The above circumstances was also relied upon by the trial court along with Exhibit A1 to A8 documents to come to the conclusion that respondent has spent 31,446 Canadian Dollars equivalent to Indian currency worth Rs.16,17,614.87, for the benefit of the appellant.

15. Even according to the appellant, he had repaid only Rs.8,00,000/- to the respondent and as such the finding of the trial court that the appellant is liable to repay a sum of Rs.3,35,564/- to the

respondent, is liable to be sustained. We do not find any irregularity or illegality in the impugned judgment of the Family Court so as to call for any interference. Therefore, this appeal is liable to be dismissed.

In the result, this appeal is dismissed with costs.

Sd/-
ANU SIVARAMAN,
JUDGE

Sd/-
C. PRATHEEP KUMAR,
JUDGE

sou.