IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2018

Pronounced on : 30-11-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 1474 of 2017

K. Shanmugha Raja @ Raja .. Appellant

Versus

Shanthakumari .. Respondent

Appeal filed under Section 19 of The Family Court Act, 1988 against the fair and final order dated 27.02.2017 passed in HMOP No. 1 of 2014 on the file of Family Court, Erode

For Appellant : Mr. P. Ganesan

For Respondent : Mr. V. Subramaniam
for Mr. S.P. Yuvaraj

Mr. M.S. Krishnan, Senior Counsel
Amicus Curiae

JUDGMENT

R. Subbiah, J

This appeal is filed as against the order dated 27.02.2017 passed in HMOP No. 1 of 2014 on the file of Family Court, Erode, by which the Original Petition filed by the appellant under Section 13 (1) (ia) (ib) (ii) of The Hindu Marriage Act, for dissolution of the marriage solemnised between him and the respondent on 01.09.2003, was dismissed.

2. As per the averments of the appellant/husband in the original petition filed by him before the Family Court, at the instance of his sister's husband, through a distant relative, the marriage proposal between him and the respondent was mooted and after deliberations by the elders of both sides, a betrothel function was arranged. At the time of the betrothel function, it was represented that the respondent is a M.A. Graduate and her family is following Hindu religion. Subsequently, the marriage between the appellant and the respondent was solemnised on 01.09.2003 at K.G.M. Thirumana Mandapam (Kulalar Thirumana Mandapam), Nadarmedu, Erode District as per Hindu rites and customs. Subsequent to the marriage, the appellant and the respondent resided in the house of the parents of the appellant. It is the contention of the appellant that within 15 days of the marriage, the respondent frequently deserted his matrimonial company, went to her parents house and continued to stay there often. By reason of such frequent desertion by the respondent, there was no consummation between him and the respondent, thereby he was subjected to acute mental agony. According to the appellant, the respondent was in the habit of talking over phone during odd hours with unknown persons. She used to desert the matrimonial company of the appellant without his consent and knowledge. Whenever the appellant questions the respondent, she will not respond, rather, she used to utter that the appellant should not interfere with her own way of life. It is also the grievance of the appellant that he studied only upto IX standard, on the other hand, the respondent is a Post Graduate and therefore, she always used to wield her superiority over the appellant and assert that she is more qualified than him. The respondent, due to a petty quarrel, deserted his matrimonial company by taking away all the jewels presented to her at the time of marriage.

3. It is the specific case of the appellant that the marriage was not

consummated owing to frequent desertion of the respondent to her parents house. It is also the contention of the appellant that the respondent stayed with him only for 15 days after the marriage in the matrimonial home. While so, the appellant came to know that the respondent gave birth to a female child. The appellant disowned his paternity of the female child by stating that he is always ready to subject himself to any medical test to show that the female child was not born to him.

4. According to the appellant, he is a devotee of the deity Ayyappa Swamy and used to go on pilgrimage to Sabarimala at Kerala after wearing *Thulasi malai* and by observing fasting. While so, when the appellant was observing fasting by wearing *Thulasi Malai*, the respondent, her parents and relatives came to the matrimonial home and threatened to remove the *Thulasi Malai* by stating that they belonged to Christianity and insisted on him to convert himself to Christianity. At this juncture, the appellant came to know that the respondent is a Christian by religion. When the appellant refused to convert himself to Christianity, he was threatened by the respondent and her relatives with dire consequences. The appellant therefore lodged a complaint dated 01.12.2003 before the All Women Police Station, Erode against the respondent and her parents based on which a case was registered in Crime No. 615 of 2003. On the basis of such complaint, an enquiry was conducted by the Police officials, during which the respondent agreed to live with the appellant in a separate house. It was also agreed that the respondent or her parents or relatives will not compel the appellant to convert himself to Christianity. Further it was agreed that the respondent had taken away all the jewels presented to her at the time of the wedding and they are in a safety locker. According to the appellant, even though the respondent agreed to join the matrimonial company of the appellant, she did not turn up. The appellant waited for the respondent to come back to the matrimonial home but all the efforts taken by

him for about two years went in vain. According to the appellant, since the respondent belonged to Christianity and it was suppressed at the time of the marriage with him, the marriage itself is void. Therefore, the appellant filed the Original Petition for dissolution of marriage on the grounds of desertion, cruelty and conversion.

5. Repudiating the averments in the Original Petition, the respondent filed a counter statement contending *inter alia* that it is true that her marriage with the appellant was solemnised on 01.09.2003, however, prior to the marriage, the respondent or her parents or her relatives never represented to the appellant or his parents that they are following Hindu religion. The respondent is a Christian which is known to the appellant and his family even before the betrothel. Since the appellant and his family members wanted the marriage to be solemnised as per the Hindu religion, rites and customs, the marriage was solemnised as per their choice at KGM Thirumana Mandapam, Erode. The respondent's aunt children namely Albert and Gilbert had married the sisters of the appellant ten years back and therefore, the appellant and the respondent knew each other well before the marriage. Thus, the appellant and the respondent are not strangers to each other prior to the marriage and they have acquaintance even prior to the marriage. According to the respondent, the appellant was fully aware of the religion to which she belonged to, prior to the marriage.

6. According to the respondent, at the time of marriage, it was represented that the appellant studied upto Higher Secondary (+2) but only after marriage, she came to know that he studied only upto IX Standard. However, the respondent, a Post Graduate, never asserted that she is superior in educational status and denied that based on the educational qualification possessed by her,

she inflicted matrimonial cruelty on the appellant. The respondent loves the appellant with all her heart and inspite of the cruel treatment meted out to her at the instance of the appellant, she is only willing to join his matrimonial company without any pre-condition.

7. According to the respondent, the averment that the marriage was not consummated is *per se* untenable. Even on the nuptial night on 01.09.2003, there was physical relationship between the appellant and the respondent and therefore, the allegation that the marriage had not been consummated is incorrect. Even after marriage, the appellant and the respondent had cohabitation and therefore the allegation that the respondent deserted the matrimonial company of the appellant frequently and that there was no cohabitation between them is baseless. In any event, after the marriage, the respondent left the matrimonial company of the appellant to her parents house only once, that too with the prior permission of the appellant. The respondent never stayed in her parents house for 15 days altogether, as alleged. The allegation that the respondent and her parents restrained the appellant from going to Sabarimalai Pilgrimage to have a darshan of Lord Ayyappa is an utter falsehood. The respondent has great tolerance and faith in other religion as well. The appellant believed in Hinduism while the respondent professed Christianity. However, there was no differences of opinion between the appellant and the respondent with respect to the religion in which they have faith. The matrimonial rift has been caused owing to the demand made by appellant and his family members for more cash and jewels from the parents of the respondent.

8. According to the respondent, within ten days of the marriage the appellant and his family members, demanded dowry in the form of cash and jewels to be brought from her parents house and that was the main reason for the

differences between her and the appellant. Further, within two months of the marriage, the respondent became pregnant, but the appellant and his parents only wanted to abort the pregnancy, which she refused. The appellant and his parents insisted that unless the respondent brings cash and jewellery or take steps to get the property settled in her favour by her father, she will not be permitted to beget the child and therefore, they insisted the pregnancy to be aborted. In fact, the appellant's father is doing business of selling Kerosene which he used to keep in the house at all times. The mother of the appellant, by showing the Kerosene can, threatened the respondent that she will set her ablaze by pouring kerosene if she fails to bring more money and jewels from her parents. Even the sister-in-law and her husband have harassed the respondent for not bringing enough money and jewels from her parents house. As the respondent did not comply with the demands of the appellant, his parents and sister, even the ceremonial "*Valaikappu*" function was not performed. While so, on 02.07.2004, unable to bear the harassment of the appellant, his parents and sister, the respondent gave a complaint to the Erode South Police Station. During the enquiry, the appellant and his parents were advised to treat the respondent well and also to perform the *Valaikappu* function. Even though an undertaking was given before the police officials, such function was not performed by the appellant and his parents. On 14.07.2004, a female child was born at Krishna Hospital, Pallipalayam and even after intimation, the appellant or his parents did not see the minor child. After four months of the birth of the child, the respondent went to the matrimonial home along with the minor child, but she was not allowed to step inside the matrimonial home. She was made to wait outside the house for more than two hours along with the four month old child. After two hours, the appellant and his parents have clearly stated that unless the respondent brings additional cash, jewellery or dowry in the form of immovable property, she will not be permitted to step into the matrimonial

home. The allegation of the appellant that he is not the biological father of the female child is a blatant lie. To prove the paternity of the child, the respondent was ready and willing to undergo any medical examination and also subject the minor child to medical examination. The respondent was forced and compelled to live at her parents house along with the minor female child as the appellant had questioned her chastity. There was no compulsion by anybody let alone respondent or her near relatives to compel the appellant to convert himself into Christianity and it was the appellant who had inflicted matrimonial cruelty upon the respondent by his conduct.

9. Above all, it was stated by the respondent that the Original Petition filed by the appellant for dissolution of the marriage under the provisions of Hindu Marriage Act is not maintainable for the reason that the respondent belonged to Christian religion and the appellant belonged to Hindu religion at the time of marriage and only the provisions of The Special Marriage Act governs them and not the provisions of The Hindu Marriage Act, therefore, the petition filed by the appellant under the provisions of Hindu Marriage Act is liable to be dismissed. Thus, the respondent prayed for dismissal of the Original Petition.

10. Before the Family Court, in order to prove the respective averments made in the Original Petition as well as the counter statement, the appellant and the respondent adduced oral and documentary evidence. The appellant examined himself as PW1 and one Anbu as PW2 and marked Exs. P1, marriage invitation. The respondent examined herself as RW1 and the Doctor who issued the medical report was examined as RW2 and marked the copy of the petition filed by her in M.C. No. 4 of 2009 as Ex.R1. Exs. C1 and C2 were also marked as Court documents. The Family Court, after analysing the oral and documentary evidence

negatived the defence raised by the respondent with regard to the maintainability of the Original Petition filed by the appellant by invoking the provisions of The Hindu Marriage Act and held that the Original Petition is maintainable. At the same time, the Family Court held that the appellant did not establish that he was subjected to matrimonial cruelty by the respondent wife besides the appellant did not prove that he is not the biological father of the female child. Aggrieved by the Order of the Family Court, the appellant-husband is before this Court with this appeal.

11. The learned counsel for the appellant would contend that the appellant is a Hindu by religion and the respondent is admittedly a Christian by religion at the time of marriage. It was admitted by the respondent in the counter affidavit that she was a Christian before the marriage and continued to be a Christian as on the date of marriage. Therefore, there cannot be a valid marriage as contemplated under Section 5 of The Hindu Marriage Act. According to the appellant, due to frequent desertion of the respondent, the marriage was not consummated. The respondent was in the habit of deserting the matrimonial company of the appellant very frequently which led to differences between the spouse. While so, it was alleged that the respondent became pregnant and had given birth to a female child on 14.07.2004. According to the appellant, when there was no consummation of marriage and the respondent lived in the matrimonial home only for a few weeks after the marriage, there was no scope for the respondent to become pregnant and therefore he disowned the paternity of the child. Further, the respondent suppressed her religion and made the appellant to believe that she belonged to Hindu religion before and after the marriage. It is in the above circumstances, the appellant was constrained to file the original petition seeking dissolution of the marriage on the grounds of adultery, desertion and conversion.

12. The learned counsel for the appellant would contend that before the Family Court, in the counter filed by the respondent, she admitted that she is a Christian by religion. While so, the Family Court erred in holding that since the marriage invitation bears the Hindu god and that the marriage was solemnised as per Hindu rites and customs, the Original Petition filed by the appellant under the provisions of The Hindu Marriage Act is maintainable. According to the counsel for the appellant, if the parties to the marriage belonged to different religion, such marriage could be registered by invoking the provisions of the Special Marriage Act before the competent authority, but in the present case, the appellant was not aware of the religion of the respondent and he was made to believe that the respondent was a Hindu by religion before and after the marriage. While so, the finding of the Family Court that the marriage solemnised between the appellant and the respondent is a valid marriage as contemplated under Section 7 of the Hindu Marriage Act, 1954 cannot be countenanced. The Family Court failed to consider that the marriage between the appellant and the respondent was only solemnised as per Hindu rites and customs and it was never registered as contemplated under The Special Marriage Act. The Family Court ought to have concluded that the marriage between the appellant and the respondent is a void marriage as contemplated under Section 11 read with Section 5 of The Hindu Marriage Act. In this context, the learned counsel for the appellant placed reliance on the decision rendered in the case of **Gullipilli Sowria Raj vs. Bandaru Pawani @ Gullipilli Pawani)** reported in **(2009) 1 Supreme Court Cases 714** wherein it was held that a marriage between a Hindu and a person who belongs to different religion, even if it is solemnised by following Hindu rites and customs, is void. For the very same proposition, the learned counsel for the appellant also relied on the decision of the Division Bench of this Court in the case of (**G. Packia Raj vs. Subbammal @**

Susila Bai) reported in **AIR 1991 Madras 319** wherein it was held that even if the marriage was solemnised between two persons belonging to different community as a *Seerthirutha form of marriage,* still it is void.

13. The learned counsel appearing for the appellant would contend that when the appellant was a Hindu and the respondent was a Christian at the time of marriage, the appellant ought to have filed a Petition to declare that the marriage solemnised between him and the respondent as a null and void. However, due to the ignorance on the part of the lawyer engaged by the appellant and owing to poor drafting of the petition, the appellant could not effectively putforth his case before the Family Court. Even otherwise, this Court can, in exercise of it's discretionary power, as contemplated under Section 19 of The Family Court Act can grant appropriate relief to the appellant. Even in the absence of express pleading on the part of the appellant, this Court can declare the marriage solemnised between the appellant and the respondent as void as contemplated under Section 5 read with Section 11 of The Hindu Marriage Act. When the respondent herself, in para-4 of the counter, admitted that she is a Christian prior to and after the marriage, the Family Court, based on such admission, ought to have held that the marriage solemnised between the appellant and the respondent is void without even presentation of a petition under Section 11 or 12 of The Hindu Marriage Act for declaring the marriage as a nullity. The appellant as well as the respondent have exhausted all their pleadings and adduced whatever evidence available with them. By virtue of the filing of the present petition by invoking the Hindu Marriage Act, the appellant could not file yet another petition with the same cause of action and seek a different relief. In this context, the learned counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in (**Firm Sriniwas Ram Kumar vs. Mahabir Prasad and others)** reported in **AIR 1951 SC 177** wherein the

Honourable Supreme Court observed that even in the absence of any pleading for alternative claim in the plaint filed for specific performance, a decree for recovery of money can be granted in order to render substantial justice. For the very same proposition, the learned counsel appearing for the appellant also relied on the decision in the case of (**Bhagwati Prasad vs. Shri Chandra Maul)**. reported in **AIR 1966 SC 735** to contend that if a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon, if it is satisfactorily proved by evidence. Therefore, according to the counsel for the appellant, even in the absence of a prayer, this Court can grant a declaratory decree declaring the marriage as null and void.

14. The learned counsel for the appellant would further contend that the marriage solemnised between the appellant and the respondent on 01.09.2003 is void within the meaning of Section 11 read with Section 5 of the Hindu Marriage Act. The appellant ought not to have filed a petition under Section 13 of The Hindu Marriage Act, instead, he ought to have filed a petition under Section 11 or 12 of The Hindu Marriage Act, however, the Family Court, ought to have moulded the relief prayed for by the appellant with an intention to render substantial relief. According to the counsel for the appellant, this Court, in exercise of appellate jurisdiction under Section 19 of The Family Court has concomitant jurisdiction and is empowered to formulate or re-formulate the relief sought for by the parties to a litigation and award appropriate relief without directing the parties to go for another round of litigation. Therefore, the learned counsel appearing for the appellant would pray that even in the absence of a prayer for declaratory decree, this Court can, in exercise of the jurisdiction conferred under Section 19 of The Family Court

Act, grant a declaratory decree, declaring the marriage solemnised between the appellant and the respondent as void, as has been contemplated under Section 5 read with Section 11 of The Hindu Marriage Act.

15. Per contra, the learned counsel for the respondent would contend that the Family Court has concluded that after the marriage, the appellant and the respondent lived together for a few days. Though, according to the appellant, the respondent deserted his matrimonial company within a period of 15 days, the fact remains that she lived with the appellant for three months and when she become pregnant, she was sent to her parents house for delivery and thereafter, the appellant did not permit her to join him in the matrimonial home. The Family Court, accepted the contention of the respondent and concluded that the desertion of the respondent is not wilful or without any just or sufficient cause, rather, she parted the matrimonial company of the appellant only when she was pregnant and went to her parents house for delivery of the child. Therefore, the Family Court rejected the plea of the appellant that the respondent left the matrimonial company of the appellant without any just or sufficient cause. The Family Court also brushed aside the plea of the appellant that he was subjected to matrimonial cruelty by the respondent. The Family Court specifically held that the appellant did not prove by sufficient evidence to hold that he was inflicted with matrimonial cruelty by the respondent and the plea of the appellant in this regard was vague, bald and not specific. The Family Court further considered the deposition of RW2 Dr. Kamalatchi Krishnamurthi who conducted the DNA test to the appellant, respondent and the minor child and concluded that it was the appellant who fathered the minor child Angel Priya born to the respondent, as evidenced from Ex.C2, report filed by RW2. Therefore, the plea of the appellant that he was not the biological father of the minor female child was rejected by the Family Court. However, the Family Court

erroneously concluded that even as admitted by the respondent, the marriage was solemnised as per the rites, customs and ceremonies followed by the Hindu religion besides the marriage invitation bears the names of the Hindu Gods, which would go to show that the marriage was solemnised as per Hindu rites and customs and therefore the petition filed by invoking the Hindu Marriage Act is maintainable. The learned counsel for the respondent would contend that the Family Court failed to consider that a petition under the provisions of the Hindu Marriage Act would be applicable only if the parties to the marriage are Hindus. However, in the present case, the appellant was Hindu and the respondent was a Christian by religion. The respondent also stated so in the counter filed before the Family Court. While so, the petition filed under the provisions of The Hindu Marriage Act is not maintainable. The Family Court failed to consider the provisions contained under Section 5 of The Hindu Marriage Act which specifically bars a proceedings under this Act if the parties to the marriage do not belong to Hindu religion. In any event, the learned counsel for the respondent would pray for dismissal of this appeal by confirming the findings of the Family Court with respect to adultery and desertion.

16. The learned counsel for both sides have advanced argument with respect to the factual matrix of the case and the oral as well as the documentary evidence were also adduced before the Family Court. However, the counsel for the appellant as well as respondent have vehemently argued with respect to the maintainability of the Original Petition filed by the appellant before the Family Court inasmuch as the appellant and the respondent belong to different religion and therefore, the invocation of the provisions contained under the Hindu Marriage Act is improper. Even though the counsel for both sides have relied on several decisions in support of their respective case, this Court, in order to arrive at a just decision in this appeal, appointed Mr. M.S. Krishnan, learned Senior Counsel as

Amicus Curiae in this appeal to assist this Court. On such appointment, the learned *Amicus Curiae* has advanced elaborate submissions touching the maintainability of the Original Petition filed by the appellant before the Family Court.

17. At the outset, the learned *Amicus Curiae* would contend that a Marriage between a Hindu boy or girl and a Christian boy or girl is a void marriage. According to the learned *Amicus Curiae*, the provisions contained under The Hindu Marriage Act governs the marriage between two Hindus. Even in the preamble to the Act, it is stated that it is an ***"Act to amend and codify the law relating to marriage among the Hindus***." By placing reliance on Section 2 (1) (a) and (c) of the Act, the learned *Amicus Curiae* would demonstrate that The Hindu Marriage Act will apply to any person who is a Hindu by religion in any of its forms, Buddhists, Jains or Sikhs and will not apply to a Muslim, Christian, Parsi or Jew. Similarly, there is a specific bar under Section 5 of The Hindu Marriage Act which clearly states the conditions which are precedent for a Hindu Marriage and that a valid marriage is the one which is solemnised between two Hindus. Further, Section 7 of The Hindu Marriage Act recognises the solemnisation of a Hindu Marriage in accordance with the customary rites and ceremonies that preceded a Hindu marriage in which special reference was made to a ceremony called *Saptapadi*. Thereagain, Section 8 of The Hindu Marriage Act provides for registration of a marriage solemnised between two Hindus as may be notified by the Government from time to time. Therefore, according to the learned *Amicus Curiae,* on a conjoined reading of these provisions, it would clearly show that a marriage between a Hindu and a Christian in accordance with Hindu custom is a nullity. The learned *Amicus Curiae* has also placed reliance on the decision rendered by the Honourable Supreme Court in *Gullipilli* case mentioned supra to demonstrate that a marriage between a Hindu and a Christian solemnised in accordance with Hindu

customs and rites is a nullity. The learned *Amicus Curiae* also brought to the notice of this Court that the said Judgment of the Honourable Supreme Court has been followed by the Division Bench of Bombay High Court in the case of (**Niranjani Roshan Rao vs. Roshan Mark Pinto)** reported in **(2014) 6 Mh.L.J. 277** by holding that the provisions contained under the Hindu Marriage Act, 1955 can be invoked only when both the spouses are Hindus. In other words, according to the learned *Amicus Curiae*, the provisions of Hindu Marriage Act cannot be invoked by a husband and wife, one of whom is not a Hindu.

18. The learned *Amicus Curiae* further proceeded to demonstrate as to whether the provisions of Special Marriage Act, 1954 will apply to a marriage solemnised between a Hindu and Christian. It is his contention that The Special Marriage Act, 1954 was enacted to provide a special form of marriage in certain cases, for registration of such marriage and also for divorce. As per the Special Marriage Act, the marriage between any two persons irrespective of the religion is valid, if the conditions prescribed under Section 4 thereof are fulfilled. Section 5 to 13 of The Special Marriage Act contemplates the procedure to be followed for registration of such marriage which ultimately culminate in a certificate of marriage issued by the competent authority under Section 13 of The said Act which is deemed to be a conclusive evidence of the fact that a marriage under this Act has been solemnised. Thus, a marriage solemnised under The Special Marriage between two persons belonging to different religion will be a valid marriage only if it culminates in obtaining a Certificate under Section 13 of the said Act issued by the competent authority under the said Act. The very same Act provides for registration of marriage under Section 15, if a marriage had already taken place between 2 persons. Section 15 also imposes certain conditions to be fulfilled for registration of the marriage. Section 16 prescribes the procedure for registration. Section 18 of

The Special Marriage Act provides that a certificate of marriage has been finally entered into marriage certificate book issued under this Act which gives a presumption that the marriage is valid from the date on which such entry is deemed to have been taken place. Section 24 of The Act also provides for declaring a marriage as null and void if the conditions specified under Section 4 have not been fulfilled or on the ground that one of the parties to the marriage was impotent at the time of marriage. Section 25 of The Special Marriage Act provides for annuling a marriage solemnised under this Act by granting a decree of nullity if the grounds specified under the said Section are applicable. Section 27 also provides for dissolution of the marriage on the grounds specified thereof. Therefore, a joint reading of the provisions contained under The Special Marriage Act would go to show that a marriage between a Hindu and a Christian, if solemnised under this Act, can be declared as a nullity or a decree of divorce can be granted if the conditions mentioned under the said Act are satisfied. If the provisions contained under The Special Marriage Act are applied to the facts of this case, according to the learned *Amicus Curiae*, it is not the case of the appellant or the respondent that their marriage was solemnised by invoking the provisions of The Special Marriage Act and therefore, the provisions contained under The Special Marriage Act are not applicable to the facts of the case.

19. Turning to the provisions contained under The Indian Christian Marriage Act, 1892, the learned *Amicus Curiae* had highlighted that it provides for marriage between persons, one or both of whom is a Christian. Section 4 of The Indian Christian Marriage Act provides that such a marriage has to be solemnised

in accordance with the provisions of that Act and Section 5 names the person by whom the marriage may be solemnised, which includes any person who has received episcopal ordination, Clergymen of the Church of Scotland or by any

member of religion licensed under this Act to solemnise marriages, by or in the presence of marriage register appointed under this Act by any person licensed under this Act to grant certificate of marriage between a Hindu and a Christian. Section 6 to 9 of The Indian Christian Marriage Act deals with grant of licenses to solemnise marriages including marriage register. Section 10 and 11 stipulate the time and place at which the marriage may be solemnised. Part III of this Act deals with marriages solemnised by the Minister of religion licensed under this Act. Similarly, Part IV of this Act provides for registration of marriages solemnised by the Ministers of religion. Part V deals with marriages solemnised by or in the presence of a Marriage Registrar. Part VI deals with every marriages solemnised between Indian Christians. Therefore, according to the learned *Amicus Curiae*, in the present case, the marriage between the appellant and the respondent was not solemnised as per the provisions contained under The Indian Christian Marriage Act even though the Act recognises the solemnisation of marriage between a Christian and a person professing any other religion. Therefore, the provisions contained under The Indian Christian Marriage Act also cannot be made applicable to the facts of this case.

20. The learned *Amicus Curiae* invited the attention of this Court to the provisions contained under The Divorce Act, 1869. As per the provisions of The Divorce Act, 1869, a marriage solemnised between a person who professes Christian and another person who profess any other religion is valid. The provisions of this Act confers jurisdiction upon certain Courts to adjudicate matrimonial dispute with respect to dissolution, judicial separation, restitution of conjugal rights, custody of child etc., Section 2 of the Act empowers the Court to grant relief to the husband or wife, one of whom is a Christian. As per Section 2 of the Act, either the husband or a wife, one of whom is a Christian, is entitled to invoke the provisions contained

under this Act for relief. This Act does not specify that it will only apply to a marriage solemnised in a particular form. If one of the parties to the *lis* is a Christian, irrespective of the form of marriage solemnised, the provisions contained under the Act will be applicable to them for resolution of matrimonial dispute. By relying upon the Full Bench decision of this Court in AIR 1991 Madras 319, the learned *Amicus Curiae* would submit that the Full Bench had an occasion to consider the matrimonial dispute among a Christian and a Hindu solemnised as per Section 7A of The Hindu Marriage Act. The Full Bench held that a *Suyamariyadhai* or *Seerthirutha* marriage between two Hindus can be solemnised under Section 7A of The HIndu Marriage Act and the said Act does not permit a *Seerthirutha* marriage between a Hindu and Christian. As per the Full Bench decision of this Court, the learned *Amicus Curiae* would submit that the marriage between the appellant and the respondent was solemnised as per Hindu rites and customs and therefore, such a marriage runs contrary to the decision rendered by the Full Bench of this Court besides being contrary to Section 7A of The Hindu Marriage Act.

21. According to the learned *Amicus Curiae*, none of the provisions contained under The Hindu Marriage Act, The Special Marriage Act, The Indian Christian Marriage Act and The Divorce Act can be made applicable to the facts of the present case on hand. In such a situation, the parties to this appeal have to approach the Family Court under Section 7 of The Family Courts Act, which empowers the Family Court to exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in clauses (a) and (g) of Explanation to Section 7 (1). Though the Family Court Act, 1984 impliedly excluded the jurisdiction of civil courts to decide matrimonial disputes, it confers power and jurisdiction on the Family Court to grant reliefs of declaration of nullity of

a marriage not only in cases which fall within the frame work of Hindu Marriage Act, Special Marriage Act, Indian Christian Marriage Act and The Divorce Act but also to cases like the one in which the parties are unable to invoke the provisions conferred under any other Acts. The powers vested in the Family Court for granting a relief of a decree of nullity in respect of any marriage is wide and will also include the power to declare a marriage as null and void if it is solemnised between a Hindu and a Christian, as per Hindu rites and customs. In this context, the learned *Amicus Curiae* placed reliance on the decision of the Honourable Supreme Court in **Gullipilli Sowria Raj vs. Bandaru Pawani @ Gullipilli Pawani)** reported in **(2009) 1 Supreme Court Cases 714**.

22. We have given our thoughtful consideration to the submissions made by the counsel for both sides as also the arguments advanced by the learned *Amicus Curiae*. We have carefully gone through the material records placed before us for our consideration.

23. It is the case of the appellant that his marriage with the respondent was solemnised on 01.09.2003 at K.G.M. Thirumana Mandapam (Kulalar Thirumana Mandapam), Nadarmedu, Erode District as per Hindu rites and customs. It is also his case that subsequent to the marriage, by reason of frequent desertion of the respondent to her parents house, the marriage did not consummate and he was denied matrimonial bliss by the respondent. It is also his case that the respondent lived with him only for 15 days altogether and thereby denied him conjugal bliss and subjected him to acute matrimonial cruelty. Above all, it is mainly contended that the respondent, her parents and relatives forced him to convert to Christianity thereby rendering the matrimonial relationship between him and the respondent a otiose. It is his contention of the appellant that the

respondent was given in marriage to him by suppressing her religion as a Christian and he was not aware of the fact that the respondent was born and brought up as a Christian. The appellant also claimed that he did not father a child through the respondent and thereby denied the paternity of the child born to the respondent soon after the marriage.

24. The contention of the appellant raised in the Original Petition were repudiated by the respondent. According to the respondent, the appellant was fully aware of the fact that the respondent is a Christian by birth inasmuch respondent's aunt children namely Albert and Gilbert have married the sisters of the appellant ten years back and therefore, the appellant knew the religion of the respondent, as a Christian. Since the appellant and his family intended to perform the marriage as per Hindu rites and customs, the respondent agreed to solemnise the marriage by following the ceremonies accustomed to Hindus. The respondent also defended the Original Petition by contending that she lived together with the appellant for three months and left the matrimonial home only when she was pregnant. According to the respondent, the marriage was consummated and the appellant is the father of the minor child born to her, soon after the marriage.

25. Before the Family Court, at the instance of the respondent, the appellant, respondent and the minor child were subjected to D.N.A. test and as per the report, Ex.C2 filed by RW2, it was clearly brought out that it was the appellant who had fathered the minor child born to the respondent. When the medical evidence unwittingly pointed out that the minor child was born only to the appellant and the respondent, we are of the view that the contention of the appellant that there was no consummation of marriage or he did not father the minor child cannot be accepted.

26. Similarly, the averment of the appellant that the respondent left his matrimonial company without any just or sufficient cause cannot be accepted inasmuch as the respondent, as RW1, had clearly deposed that she left the matrimonial home only when she was pregnant and that the appellant did not evince interest to take her back to the matrimonial home after the birth of the minor child. The respondent, as RW!, withstood firm and reiterated in her cross-examination that she left the matrimonial home only when she was pregnant and therefore, it cannot be said that she deserted the appellant.

27. In the present appeal, even though several contentions have been urged on behalf of both sides, the bone of contention of the respondent is that the Original Petition filed by the appellant before the Family Court invoking the provisions of Section 13 of The Hindu Marriage Act is not maintainable especially when the respondent was Christian at the time of marriage. It was also contended that there is a specific bar under Section 5 of The Hindu Marriage Act, but it was simply brushed aside by the Family Court by holding that the marriage was solemnised only as per Hindu rites and customs and that the marriage invitation portrays the Hindu God and therefore, the Original Petition is maintainable. In effect, it was mainly contended by the respondent that the Original Petition is not maintainable. Even though the respondent has not filed any appeal as against the finding of the Family Court that the Original Petition is maintainable, yet, in the absence of any appeal by the respondent, the legality or otherwise of the maintainability of the Original Petition filed before the Family Court can be gone into by this Court in this appeal. It is also to be pointed out that the counsel for the appellant also seeks for a declaratory decree to declare the marriage solemnised between the appellant and the respondent as null and void in exercise of the

appellate jurisdiction conferred on this Court under Section 19 of The Family Court Act, meaning thereby, the counsel for the appellant also admits that the Original Petition filed before the Family Court is not maintainable. The counsel for the appellant specifically argued that due to the ignorance on the part of the lawyer engaged by the appellant before the Family Court and owing to poor drafting of the petition, the appellant could not get the required relief before the Family Court. Thus, the counsel for both sides vehemently argued as regards the maintainability of the Original Petition filed by the appellant before the Family Court. It is in these circumstances this Court appointed Shri. M.S. Krishnan, learned Senior Counsel as *Amicus Curiae* and he has also advanced elaborate arguments touching the maintainability of the Original Petition filed by the appellant before the Family Court.

28. The appellant, in the Original Petition feigned innocence as if he did not know that the respondent is a Christian, which according to the respondent is nothing but a falsehood. According to the respondent, even prior to the marriage, the appellant knew well about the religion to which she belonged to and therefore, it is not as if the marriage was solemnised by suppressing the religion of the respondent as a Christian. Be that as it may, before the trial Court, the respondent categorically asserted that she is a Christian by religion. Admittedly, the appellant is a Hindu by religion. Even though the marriage was solemnised by following the ceremonies practised by Hindus, it will not be a ground for the appellant to invoke the provisions contained under The HIndu Marriage Act inasmuch as Section 5 operates as a bar for the appellant to file the Original Petition. Section 5 of The Hindu Marriage Act prescribes certain conditions, one of the conditions is that the marriage must have been solemnised between any two Hindus and only in such event, a petition filed under any of the provisions contained under The Hindu Marriage Act can be maintained. In this context, several decisions were relied on by the counsel for both sides and significant among them is the decision of the

Honourable Supreme Court rendered in **Gullipilli Sowria Raj vs. Bandaru Pawani @ Gullipilli Pawani)** reported in **(2009) 1 Supreme Court Cases 714** wherein in para Nos. 16 to 18, it was held as follows:-

> "16. Although, an attempt has been made to establish that the Hindu Marriage Act, 955 did not prohibit a valid Hindu Marriage of a Hindu and another professing a different faith, we are unable to agree with such submissionz in view of the definite scheme of the 1955 Act.....
>
> 17. Section 2 of the Act which deals with application of the Act, and has been reproduced hereinabove, reinforces the said proposition. Section 5 of the Act, thereafter, also makes it clear that a marriage may be solemnised between any two Hindus if the conditions contained in the said section were fulfilled. The usage of the expression "may" in the opening line of the section, in our view, does not make the provision of Section 5 optional. On the other hand, it in positive terms, indicates that a marriage can be solemnised between two Hindus, if the conditions indicated were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnised. The expression "may" used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnised according to the ceremonies indicated therein.
>
> 18. In the facts pleaded by the respondent in her application under Section 12 (1) (c) of the 1955 Act and the admission of the appellant that he was and still is a Christian belonging to the Roman Catholic denomination, the marriage solemnised in accordance with Hindu customs was a nullity and its registration under Section 8 of the Act could not and/or did not validate the same. In our view, the High Court rightly allowed the appeal preferred by the respondent herein and the judgment and order of the High Court does not warrant any interference."

29. By following the aforesaid decision of Honourable Supreme Court in *Gullipilli* case, the Division Bench of the Bombay High Court had an occasion to deal with a similar case in the case of (**Niranjuani Roshan Rao vs. Roshan Mark Pinto)** reported in **2014 (6) Mh.L.J. 277** wherein in para No.13, it was held as follows:-

> "13. Learned Advocate for the appellant submitted that under the Hindu Marriage Act, the marriage can be performed only between two Hindus and if any one of the parties or both are not

Hindus, the marriage would be a nullity. In support of his contention, he has placed reliance on a decision in the case of *(Gullipilli Sowria Raj vs. Bandaru Pawani @ Gullipilli Pawani, 2009 (1) SCC 714*. We had carefully gone through the said decision. We find that in the said case, the respondent-wife had filed a petition before the Family Court under Section 12 (1) (c) of The Hindu Marriage Act for a decree of nullity of the marriage. The main ground taken therein was misrepresentation by the husband that he was a Hindu by religion. In the said case, the wife was a Hindu and the husband was a Christian and the marriage was performed under Hindu Marriage Act and was also registered under Section 8 thereof. However, the main distinction between the decision relied on and the present case is that the respondent-husband therein had suppressed the fact that he was a Christian at the time of marriage and hence, the wife married him thinking him to be a Hindu. Later on, when he came to know that the husband was a Christian, she filed the petition under Section 12 (1) (c) for a decree of nullity of marriage on the ground that she had been beguiled into the marriage by the husband on fraudulent considerations, one of which was that he was a Hindu at the time of marriage. Such are not the facts in the present case. In the present case, the appellant knew since the beginning that the respondent was a Christian, hence, there is no case of force or fraud in the present case. No arguments to that effect have also been made in the petition before the Family Court. Thus, this decision cannot be made applicable to the facts of the present case.

30. Further, a Division Bench of this Court in the case of (**G. Packia Raj vs. P. Subbammal alias Susila Bai)** reported in **AIR 1991 Madras 319** held that if either of the parties was a Christian, it would be sufficient to invoke the jurisdiction of the Court under the Indian Divorce Act. So unless a valid marriage is solemnised under any system of law which subsists, the question of it's dissolution will not arise at all. In this context, useful reference can also be made to the decision of the Division Bench of the Punjab and Haryana High Court in the case of (**Sarabjit Singh vs. Lourdes Serrato)** reported in **2014 (3) RCR (Civil) 783)** wherein it was held as follows:-

"5. The HIndu Marriage Act, in terms of Section 2 applies to any person, who is a Hindu by religion and to any person, who is a Buddhist, Jain or Sikh by religion and to any other person domiciled in the territories to which this Act extends, who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in

respect of any of the matters dealt with therein if the Act had not been passed. Therefore, it is essential that to solemnise marriage under The Hindu Marriage Act, the parties should be Hindus and if they are not, the marriage is not to be performed in accordance with the provisions of the Act although it may be performed in accordance with the provisions of the Special Marriage Act, 1954."

31. The above decisions rendered by the Honourable Supreme Court as well as the Division Bench of the respective Courts are squarely applicable to the facts of the present case. In the present case, admittedly, at the time of marriage, the appellant was a Hindu and the respondent a Christian and therefore, the invocation of the provisions contained under the Hindu Marriage Act by the appellant to dissolve the marriage solemnised between him and the respondent is legally not sustainable. The Original Petition filed by the appellant, a Hindu, against the respondent, a Christian by invoking the provisions of The Hindu Marriage Act *is per se* not maintainable and it is liable only to be rejected. Therefore, we have no hesitation to hold that the Original Petition filed by the appellant before the Family Court is not maintainable and the Family Court erred in holding that the Original Petition filed by the appellant is maintainable and triable by it.

32. The learned Counsel appearing for the appellant would concede that the Original Petition filed by the appellant before the Family Court by invoking the provisions contained under The Hindu Marriage Act is not maintainable. However, he seeks for a declaratory decree declaring the marriage solemnised between the appellant and the respondent as null and void by moulding or re-casting the prayer sought for by the appellant, in the interest of justice. We are not in a position to accede to the said submission of the learned counsel for the appellant. It is not as though the appellant has filed the Original Petition by quoting a wrong provision of law or the prayer sought for in the original petition is innocuous. The fact remains that the very invocation of the provisions of The Hindu Marriage Act itself cannot be

countenanced inasmuch as the parties to the Original Petition belong to different religion. While so, when Section 5 of The Hindu Marriage Act operates as a bar for filing such a petition, even in exercise of the appellate jurisdiction conferred under Section 19 of The Family Court Act, we cannot alter or mould the relief prayed for by the appellant and grant a declaration decree. It is not a suit for specific performance where, due to inadvertence, the plaintiff failed to seek for alternative relief of refund of the advance sale consideration. A relief of such nature can be moulded by the Court and the alternative relief can be granted in order to render complete justice to both sides, even in the absence of any pleading to that effect. In the present case, when the appellant and the respondent belong to different religion, the appellant ought not to have invoked the provisions contained under The Hindu Marriage Act and consequently, as mentioned above, the Original Petition is not maintainable and we reject the argument of the counsel for the appellant to grant a declaratory decree in favour of the appellant.

33. Having regard to the above facts and circumstance of the case, the appellant cannot also resort to invoke the provisions contained under The Special Marriage Act, 1954 to get a decree of divorce as for invocation of the provisions contained under the said Act, a Certificate of marriage has to be obtained under Section 13 of The Special Marriage Act and such a certificate has not been admittedly obtained by the appellant in this case. The Special Marriage Act can be invoked for dissolution of a marriage solemnised between any two persons irrespective of the religion. However, for declaration of a marriage or for any other relief, the Act requires a certificate to be obtained from the competent authority under Section 13 of the said Act and that the marriage between the parties should have been registered as contemplated under the provisions of this Act. In this case, the marriage was not registered or solemnised between the appellant and the

respondent by fulfilling the conditions specified under Section 13 of the Special Marriage Act and therefore, it has no application to the facts of the present case.

34. Similarly, The Indian Christian Marriage Act, 1882, governs the marriage between persons, one or both of whom is a Christian. If the marriage between two persons is solemnised by following the procedures prescribed under this Act, then one of the parties to the marriage can invoke the provisions of The Indian Christian Marriage Act. Even though the respondent is a Christian by birth, since her marriage with the appellant was not solemnised as per the provisions contained under The Indian Christian Marriage Act it cannot also be made applicable to the facts of this case.

35. As far as The Divorce Act, 1989 is concerned, it governs the marriage solemnised between a person who professes Christian and another person who profess any other religion. In other words, if one of the parties to the *lis* is a Christian, irrespective of the form of marriage solemnised, the provisions contained under the Act will be applicable to them for resolution of matrimonial dispute. Here again, as the marriage between the appellant and the Hindu was solemnised as per Hindu rites and customs, such a marriage cannot be annulled by a competent Court of law by invoking the provisions contained under The Indian Divorce Act as well.

36. As the provisions contained under The Hindu Marriage Act, 1955, The Special Marriage Act, 1954, The Indian Christian Marriage Act, 1872 and The Divorce Act, 1869 are not applicable to the case on hand, whether the appellant can be left remediless without any avenue for redressal of his grievance. In this context, the learned *Amicus Curiae* would contend that Section 7 of The Family Courts Act provides that the Family Court can exercise all the jurisdiction exerciseable by any District Court or any Subordinate Civil Court under any law for

the time being in force in respect of suits and proceedings of the nature referred to in clauses (a) and (g) of Explanation to Section 7. Therefore, Section 7 of The Family Court Act, which deals with jurisdiction, can usefully be extracted hereunder:-

> "7. Jurisdiction:- (1) Subject to the other provisions of this Act, a Family Court shall:-
>
> (a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation, and
>
> (b) be, deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.
>
> 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 by annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage.
>
> (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person
>
> (c) a suit or proceeding between the parties to a marriage with respect to the property or the parties of or either of them
>
> (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship
>
> (e) a suit or proceeding for a declaration as to the legitimacy of any person
>
> (f) a suit or proceeding for maintenance
>
> (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor."

37. A reading of Section 7 of The Family Court Act would indicate that it does not specify the person or persons, who belonged to a particular religion, to invoke the provisions contained under the said Act. The provisions contained under Section 7 of The Family Court Act would apply to any person who, for any reason, could not invoke the provisions contained under the other Acts namely The Hindu Marriage Act, 1955, The Special Marriage Act, 1954, The Indian Christian

Marriage Act, 1872 and The Divorce Act, 1869. The Family Court Act is a complete code in itself which deals with dissolution of marriage, maintenance, custody of child, declaration of the marital status etc., among the parties to a marriage, whose marriage was solemnised by following any customs or rites prevailing in any community. Therefore, we are of the view that the provisions contained under Section 7 of The Family Court is the only remedy for the appellant to redress his matrimonial grievance. In other words, those who could not invoke the provisions contained under The Hindu Marriage Act, 1955, The Special Marriage Act, 1954, The Indian Christian Marriage Act, 1872 and The Divorce Act, 1869, can invoke the jurisdiction conferred with the Family Courts under Section 7 of The Family Court and it is the only panacea for all the legal remedies touching the matrimonial dispute between the spouse. Therefore, as mentioned above, we hold that the Original Petition filed by the appellant before the Family Court for dissolution of the marriage solemnised between him and the respondent under Section 13 of The Hindu Marriage Act is not maintainable. In this context, it would be useful to refer to the Judgment of the Honourable Supreme Court in the case of (**Balram Yadav vs. Fulmaniya Yadav)** *Civil Appeal No. 4500 of 2016 (arising out of SLP (C) No. 8076 of 2015) dated 27.04.2016 reported in* ***AIR 2016 SC 2161*** *wherein* it was held as follows:-

> "7. Under Section 7 (1) Explanation (b), a suit or a proceeding for a declaration as to the validity ofboth marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Courts. In case there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984 has an overriding effect on other laws.
>
> 8. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside. The matter is remitted to the High Court to be decided on merits. We request the

High Court to hear the appeal afresh and dispose it of expeditiously preferably within a period of six months."

38. Thus, it is open to the appellant to invoke the jurisdiction conferred upon the Family Court under Section 7 of The Family Court Act by filing a suit for declaration invoking Section 34 of The Special Relief Act, to declare that there exists no relationship of husband and wife between the appellant and the respondent inasmuch as there is no valid marriage held between them.

39. The learned Amicus Curiae would finally submit that the appellant, respondent and the minor child were subjected to medical examination which had clearly pointed out that it was the appellant who had fathered the minor child. In such circumstances, according to the learned Amicus Curiae, though there is no valid marriage between the appellant and the respondent in the eye of law, there was a semblance of marriage in the presence of elders and relatives, hence, the minor female child born to the respondent through the appellant has to be considered as a legitimate child as per Section 16 of The Hindu Marriage Act in view of the Judgment rendered by the Honourable Supreme Court in (**Rameshwari Devi vs. State of Bihar and others)** reported in **(2000) 2 Supreme Court Cases 431** wherein it was held as follows:-

"14. It cannot disputed that the marriage between Narain Lal and Yogamaya Devi was in contravention of clause (I) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include the widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogamaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogamaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. This is, however, the

legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesiad is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.

15. Rameshwari Devi has raised two principal objections (I) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religions ceremonies required for a valid Hindu marriage and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi through her marriage with Narain Lal would be legitimate under Section 16 of The Hindu Marriage Act. The first objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of the marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect, we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal heir. That was on the basis of claims filed byRameshwari Devi. The inquiry was quite a detailed one and there are in fact two witnesses examined during the course of inquiry, being (I) Sant Prasad Sharma, Teacher, DAV High School, Danapur and (2) Shri. Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi, from this wedlock has also been testified during the course of inquiry byChandra Sekhar Singh, retired District Judge, Bhagalpur. Smt (Dr). Arun Prasad, Sheohar, Smt. S.N. Sinha, Wife of Shri. S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed that Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in the records as the sons of Narain Lal.

40. Having regard to the above, we are not inclined to make any comment as regards the status of the minor female child born to the appellant and the respondent as it would be beyond the scope of the appeal. Therefore, we leave it open to the parties to work out their remedy with regard to the right of the minor

female child before the appropriate forum in a manner known to law.

41. Before parting with, we record our whole-hearted appreciation for the extensive assistance rendered by Shri. M.S. Krishnan, learned Senior Counsel, who accepted our request to act as an Amicus Curiae for deciding the issues involved in this appeal.

42. In the result, we confirm the order dated 27.02.2017 passed in HMOP No. 1 of 2014 on the file of Family Court, Erode. Consequently, the Appeal Suit is dismissed. No costs.

(**R.P.S.J**.,) (**C.S.N.J,**)

30-11-2018

rsh

Index : Yes

To

The Presiding Officer
Family Court, Erode

R. SUBBIAH, J

and

C. SARAVANAN, J

rsh

Pre-delivery Judgment in
CMA No. 1474 of 2017

30-11-2018