



CMA.No.2805 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**C.M.A.No.2805 of 2022 &
CMP.No.21848 of 2022**

S. Manibalan ... Appellant

Vs.

D. Anbukarasi ... Respondent

Civil Miscellaneous Appeal filed under section 19 of Family Courts Act against the judgment and decree dated 15th November 2022 made in HMOP.No.159 of 2020 on the file of the Family Court, Cuddalore.

For Appellant : Mr. S. Lakshmanasamy

For Respondent : Mr. R. Kamaraj



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JUDGMENT

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This Civil Miscellaneous Appeal has been preferred by the appellant challenging order passed by the Family Court, Cuddalore in HMOP.No.159 of 2020 dated 15.11.2022.

2. The respondent filed a petition in HMOP.No.159 of 2020 against the appellant before the Family Judge, Cuddalore, under section 5(ii)(b), 12(1)(b) and 12(1)(c) of Hindu Marriage Act seeking annulment of the marriage solemnized between them on 01.12.2019. The respondent, in her petition, had mainly averred that the marriage was performed without her consent and will and therefore, she consumed poison and she was rescued by her neighbours; the marriage has not been consummated till date and there is no cohabitation between the parties.

3. Refuting the same, the appellant herein filed a counter stating that the averments in the HMOP petition did not attract section 12(1)(b), 12(1)(c) and 5(ii)(b) of Hindu Marriage Act and the respondent herein is a well educated person and working as a surveyor in Taluk Office and the marriage between the



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appellant and the respondent has been performed with the consent of the respondent. According to him, the respondent never consumed poison and it is a false statement of the respondent. The solemnized marriage cannot be nullified without sufficient cause contemplated under the Act.

3.1. The learned Family Court Judge, on appreciation of oral and documentary evidence, and on hearing submissions on either side, allowed the HMOP on the ground that the marriage was not performed out of the free will and consent of the respondent herein and therefore came to the conclusion that there was no cohabitation between the parties.

3.2. Challenging the judgment and decree nullifying the marriage, the husband, as appellant, preferred the present Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellant/husband submitted that the averment mentioned in the petition will not attract section 12 of the Hindu Marriage Act. The wife, in order to substantiate her pleadings, has let in only oral evidence and the same is not corroborated by any documentary evidence. There was no quarrel between them and she never consumed poison. The evidence given by the father of wife is not believable. The wife is an educated person and



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was employed in Survey Department and the marriage has been performed with the full consent of the wife, however, without any reason, she suddenly filed a petition seeking annulment of marriage on the ground that her consent was obtained by her parents by force. Therefore, he prayed for allowing of this appeal.

5. The learned counsel appearing for the respondent/wife submitted that by threat of her parents that they will consume poison, the marriage was performed. According to the learned counsel for the respondent, on 26.4.2020, the appellant came in a drunken mood and assaulted the respondent and also abused her in a filthy language and made mental and physical torture to her. So that, she consumed poison. Her neighbours took her to hospital and rescued her. The respondent is now working in Revenue Department as Government Servant. The appellant is always been found in a drunken mood and till date there was no cohabitation between the parties. The learned Family Judge, after examining the witnesses and scrutinizing material evidence, came to a conclusion that the parents of the respondent alone are responsible for the unwilling marriage of the respondent with appellant. Further, it opined from the evidence adduced by both



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sides that there is no cohabitation between the parties. Taking into consideration, the above facts, it granted the relief of annulment of marriage. Hence, the order passed by the Family Judge warrants no interference, therefore he prayed for dismissal of this Civil Miscellaneous Appeal.

6. Heard the rival submissions of the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the material and documentary evidence placed on record.

7. Upon hearing both sides and on perusing the records, the point for determination in this appeal is as follows;

i. Whether the respondent is entitled to a decree for the relief of annulment of marriage on the ground that consent was obtained by force and by fraud?

8. The contention of the learned counsel for the appellant is that the relief sought for by the respondent under section 12(1)(b) and 12(1)(c) is not maintainable in law and the averments raised in the petition will not come under section 12 of the Hindu Marriage Act.

Section 12 of the Hindu Marriage Act reads thus;



'12.Voidable Marriages:-

(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

9. Section 12(1)(c) of the Act enunciates that the marriage can be annulled

on the ground when the same was performed by force or by fraud. In the instant case on hand, it seen that the marriage of the wife was performed with the appellant without her own consent and wish, but the same was done under the compulsion of respondent's parents. Though she was not willing to marry the appellant, she was threatened by her parents that if she did not give her consent to marry the appellant, they would consume poison and the abovesaid fact was admitted by the respondent in her evidence as follows;

'எனக்கு மாப்பிள்ளை பிடிக்கவில்லை என்று என் பெற்றோரிடம் சொன்னேன். என் பெற்றோர் மாப்பிள்ளை வீட்டிற்கு போய்விட்டு வந்துவிட்டோம் இப்படி சொல்லுகிறாயே நாங்கள் எப்படி அவர்களிடம் பேசுவது என்று பேசிக்கொண்டிருந்தோம்....



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The above evidence reveals that the respondent/wife is not willing to marry the appellant/husband.

10. Admittedly, the respondent's father who was examined as PW3 deposed about the compulsion exerted on her daughter to accept the marriage proposal. In his evidence, he had deposed as follows;

“மேலும் எனது மகளிடம் நான் சொல்லுவது போல்
திருமணம் செய்து கொள்ளவில்லை என்றால் நான்
தற்கொலை செய்துகொள்வேன் என்று மிரட்டினேன். எனது
மகளும் எனது மிரட்டலுக்கு பயந்து இருந்துவிட்டார்.”

In the instant case, the consent of the respondent/wife was obtained by her parents by force or compulsion or threatening that they would commit suicide. Therefore, it is clear that the averment in the petition come under section 12 (1) (c) of Hindu Marriage Act.

11. As per Hindu Marriage Act, the marriage has to be solemnized with free consent of both parties without coercion, compulsion and apprehension. The respondent's father, in order to avoid social stigma, forced her to marry the Appellant. The respondent, even though a well educated women employed in Government Department, as a dutiful daughter, has to accept her parents request under threat, but she was not able to cohabit.

12. Further perusal of evidence would go to show that the respondent lived



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with the appellant in a separate family set up, for a short period. Within a short span of marriage, she being unable to bear the physical and mental torture given by the husband, consumed poison. But admittedly, the same was denied by the appellant in his evidence.

13. In this regard, it is useful to extract the evidence of RW2, who is the sister of the appellant. In her evidence, she had deposed as follows;

"மனுதாரர் மருந்து குடித்துவிட்டு பண்ணுட்டி அரசு மருத்துவமனையில் சிகிச்சையில் இருந்தார். ஆனால் கொடுமை எதுவும் செய்யவில்லை, "

From the admission of RW2, it is clear that the respondent consumed poison and was admitted in hospital for treatment and having regard to the same, she has lodged a complaint against her husband/appellant and her in-laws.

14. Secondly, there was no cohabitation between the parties, as the marriage took place under threat. Every marriage has to be followed by cohabitation between the spouse. In the present case, the marriage was performed without the consent of the respondent and she was forced to marry the appellant under the threat and coercion of her parents. Accordingly, the marriage has not been consummated.



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15. All the above facts would go to show that the marriage was performed under compulsion and threatening made by the parents of the respondent. The respondent, not able to tolerate such unwilling marriage, consumed poison and has been rescued by her neighbours. There was no cohabitation between the parties and the marriage was not consummated till date. The respondent is not willing to live with the appellant. Considering the above facts and circumstances of the case, We concur with the findings of the court below that the respondent/wife is entitled to get the relief of annulment of marriage. The Civil Miscellaneous Appeal is devoid of merits and accordingly it is hereby dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

[J.N.B.,J.] [P.D.B.,J.]
26.06.2024

Index: yes/no
Internet:yes/no
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To
The VII Addl. Family Court, Chennai.

J. NISHA BANU, J.
&
P. DHANABAL, J.

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