

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

Mat.Appeal.No. 426 of 2010 ()

AGAINST THE ORDER IN OP 790/2009 of FAMILY COURT,KOZHIKODE DATED 02-02-2010

APPELLANT/PETITIONER:

PARAMESWARAN P,S/O. MUNDAN,
PARAMBIL THODI HOUSE, EDAPPARAMBU, MORAYUR POST
ERNAD TALUK, MALAPPURAM DISTRICT, (KONDOTTY PSL)

BY ADVS.SRI.JOSEPH SEBASTIAN PURAYIDAM
SMT.MABLE.C.KURIAN

RESPONDENTS/RESPONDENTS:

1. K.BINDHU, S/O. SURENDRAN MASTER,
KARAKKADU HOUSE, VATTAPARAMBU COLONY, KADALUNDY
CHALIYAM POST, KOZHIKODE.
2. SOMASUNDARAN, S/O.SURENDRAN MASTER,
KARAKKADU HOUSE, VATTAPARAMBU COLONY, KADALUNDY
CHALIYAM POST, KOZHIKODE.

R1 BY ADV. SMT.T.RESMI DAMODARAN ,SRI.GANGESH(B/O)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 11-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

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Mat.A.No.426 of 2010
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Dated this the 11th day of August, 2015.

JUDGMENT

Ramakrishnan,J:

The petitioner in O.P.No.790/2009 on the file of the Family Court, Kozhikode is the appellant herein. The petition was filed by the petitioner seeking a decree for divorce under section 13(1)(iii) of the Hindu Marriage Act on the ground that the first respondent is suffering from incurable mental illness.

2. The case of the petitioner in the petition was that the petitioner married the first respondent on 31.1.1992 as per custom and two children were born to them in that wedlock. They lived together as husband wife. After two or three days of their marriage, the first respondent started to behave in an indecent manner towards the petitioner. She was always suspicious about the petitioner. One day she unfolded her thali chain and thrown to the petitioner stating that he had talked with his elder brother's wife. She has also scolded him. Since the petitioner could not tolerate the behaviour of the first respondent, he left her at her house. After one month, he

take back her considering the advice of his family members. But there was no change in her behaviour. She has also behaved to the women at the neighbourhood in an indecent manner and uttered rubbish words on them. The behaviour and attitude of the first respondent caused much difficulties and mental pain to the petitioner. While so, she became pregnant and during October, 1993 she was taken for delivery and she delivered a child on 18.2.1994. After the delivery, she was reluctant to come to the house of the petitioner. In spite interference of mediators and relatives, she come and lived with the petitioner. She lived at her house for about three years. On 30.6.1997, the petitioner issued a lawyer notice to the first respondent demanding restitution of conjugal rights. After receiving the notice, she was willing to return to the house of the petitioner and he has taken her to his house. While so, she became pregnant and delivered the second child on 28.12.1998. They lived together some more period. The petitioner had adjusted with her at his maximum. In the year 2002, her behaviour became more worse. She never looked after the affairs of the petitioner and children. She was not even interested in doing the household works. She had shown some sort of

mental illness at that time. So the petitioner has taken her for consultation with a doctor. Again they consulted the said doctor on 13.4.2004. He informed the illness of the first respondent to her relatives. But, the family members of the first respondent told that she had no illness at all. They alleged that the petitioner was trying to kill her by giving medicines. They told him that he should not give medicines to her. But due to the mental illness of the first respondent, nobody was coming to the house of the petitioner including his relatives and neighbours. They were keeping a distance from them. She had also picked up quarrel with everybody. Due to her mental illness, the petitioner has suffered very much and she was also not interested for cohabitation. She has also ill treated him personally. In September 2005, her illness was aggravated and she had spoiled the household articles. Further, she has also made an attempt to commit suicide by cutting vein on her hands. Even though this was informed, the family members of the first respondent never cared to give any treatment to her. They had taken the stand that she had no illness at all. Though attempts were made by the petitioner to treat her and get himself adjusted with her, her condition

become more worse and there was no improvement in her illness and it was very difficult for the petitioner to live with her as well. So, under the circumstances, the petitioner has no other remedy except to approach this Court seeking divorce on the ground of incurable mental illness of the first respondent.

3. The first respondent was represented by her brother as guardian and he filed counter on behalf of the first respondent. He admitted the marriage and also birth of the children in the wedlock. He denied the allegation of mental illness of the first respondent. According to him, the allegations regarding her ill treatment or showing abnormal behaviour with the family members and the neighbors etc were false. The allegation of attempt to commit suicide by her was also denied. According to him, the petitioner used to pick up quarrel with her on silly matters and ill treated her for quite sometime and due to that, she happened to sustain some injury which affected her nerves on the head. In pursuance to the same, she sustained some mental illness. But she never gave any complaint before any authority considering the future of the children. The petitioner is also using drugs and he was

terminated from service of the bank in which he was working. So the allegation that she is suffering incurable mental illness is incorrect and the present mental condition is on account of the act of the petitioner. So he prayed for dismissal of the petition.

4. The petitioner was examined as PW1 and Exts.A1 and A2 were marked on his side. The second respondent was examined as RW1. Exts.B1 to B9 were marked on respondents' side. After considering the evidence on record, the court below found that the petitioner has failed to prove the nature of mental illness and also failed to prove that the mental illness alleged by him is incurable in nature so as to entitle a decree for divorce under section 13(1)(iii) of the Hindu Marriage Act and dismissed the application. Aggrieved by the same, the present appeal has been filed.

5. Heard and perused the records.

6. Counsel for the appellant submitted that in paragraph 15 of the judgment, the court below had reiterated the nature of mental illness alleged. It is also an admitted fact, which is revealed in evidence of RW1, and also his counter statement filed on behalf of the first respondent that she is suffering from

mental illness and she was not cured even at the time when the petition was filed and evidence was taken. So under the circumstances, the court below was not justified in placing burden on the petitioner, who is the appellant herein, to prove the nature of illness as well. If at all this Court feels that the burden is on the appellant, he prayed for an opportunity to adduce evidence to prove the nature of mental illness suffered by the first respondent and its gravity and also whether the illness is curable and incurable in nature as claimed by him.

7. It is an admitted fact that the appellant married the first respondent in the year 1992 and two children were born to them in the wedlock. It is also in a way admitted by PW1 that even during subsistence of marriage, she was showing some signs of abnormality, but those things were tolerated by the appellant on the belief that she can be cured. The case of the appellant is that the disease of the first respondent had increased and become intolerable and even now she is undergoing treatment for mental illness. It is seen from the written statement filed by the second respondent on behalf of the first respondent that she was undergoing treatment for some mental illness and the treatment even now continues is

admitted. But, according to the first respondent, the present mental condition was due to some ill treatment inflicted by the appellant on the first respondent. But the court below rejected that contention on the ground that there was no evidence adduced on the side of the respondents to prove that on account of the assault alleged to have been made by the appellant on the first respondent, she sustained some head injury which resulted in her present mental condition. However, Ext.B1 produced by the respondents themselves will go to show that she is having some mental illness for which she is being treated even at the time when the petition was filed and during trial of the case as well. It is pertinent to note that the first respondent was not available for examination and also there is no dispute raised by the second respondent that she is capable of conducting case by herself but, on the other hand, he had filed counter as guardian of the first respondent and admitted at the time of evidence of RW1 that she is suffering from some mental illness and treatment even now continues. Further, the only ground made by the court below for dismissing the application was that PW1 was not aware of the nature of mental illness and whether the mental illness alleged to be suffering

by the first respondent of incurable nature and no attempt was made by the appellant to examine her by an expert to prove her mental condition and on that ground, dismissed the petition. So under the circumstances, we feel that having found that she was suffering from some mental illness and she was undergoing treatment at the time when trial was in progress, an opportunity has to be given to the appellant to prove the nature of mental illness being suffered by the first respondent and its gravity and also to prove as to whether the mental illness alleged to have been suffered by the first respondent is curable in nature or incurable in nature or of such a nature that it is impossible to lead a normal marital life for the first respondent with the petitioner. For that purpose an opportunity has to be given to the appellant to adduce medical evidence by examining the doctor, who treated the first respondent, subject to the first respondent medical examination by a Medical Board to ascertain her present mental condition and also gravity of the mental illness etc. For that purpose, the decree and judgment passed by the court below dismissing the application has to be set aside and the matter has to be remitted to the court below for fresh disposal.

So the appeal is allowed and decree and judgment passed by the court below dismissing the application are set aside and the matter is remitted to the court below for fresh disposal giving liberty to the appellant to adduce further evidence regarding mental illness alleged to be suffering by the first respondent either by adducing medical evidence by examining the doctor or filing application before the Family Court subject her for medical examination by a Board consisting of Psychiatrist so as to ascertain the nature of mental illness and its gravity etc and then dispose of the case in accordance with law. Considering the fact that the case is of the year 2009, the Family Court is directed to take all earnest attempts to dispose of the case at the earliest.

Communicate a copy of this judgment to the court below at the earliest.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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