



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.S.A. (MD) Nos.8 and 9 of 2015

&

M.P. (MD) Nos.1, 1, 2 and 2 of 2015

Dr.S.Harshavarthan

... Appellant in both the C.M.S.As./
Petitioner in HMOP No.149/10/
Respondent in HMOP No.155/10

Vs.

S.Karpagavalli

... Respondent in both the C.M.S.As/
Petitioner in HMOP No.155/10/
Respondent in HMOP No.149/10

Civil Miscellaneous Second Appeals filed under Section 28 of the Hindu Marriage Act, 1955, r/w. Section 100 of C.P.C., against the judgment and decree, dated 07.08.2014, passed in H.M.C.M.A.Nos.4 and 5 of 2013 by the learned District Judge, Sivagangai District, setting aside the judgment and decree, dated 11.09.2013, passed in H.M.O.P.Nos.149 and 155 of 2010, by the learned Subordinate Judge, Devakottai.

For Appellant
(in both the C.M.S.As.)

: Mr.V.R.G.Mohan

For Respondent
(in both the C.M.S.As.)

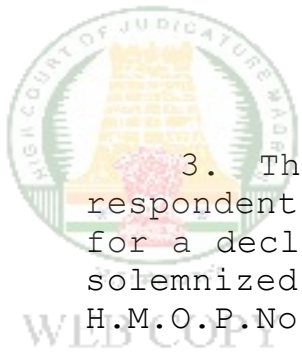
: Mr.M.Vijayarathinam

C O M M O N J U D G M E N T

Both the Civil Miscellaneous Second Appeals have been filed against the common judgment and decree, dated 07.08.2014, passed in H.M.C.M.A.Nos.4 and 5 of 2013 by the learned District Judge, Sivagangai District, setting aside the judgment and decree, dated 11.09.2013, passed in H.M.O.P.Nos.149 and 155 of 2010, by the learned Subordinate Judge, Devakottai. The Trial Court as well as the First Appellate Court heard both the H.M.O.Ps. and H.M.C.M.As. together and disposed the same by a common order and judgment. The parties in both the appeals are one and the same and issue is interlinked. Therefore, both the C.M.S.As. are heard together and disposed of by this common judgment.

<https://hcs.judges.org.in/hcs/judges>

2. The parties are referred to as appellant and respondent.



3. The appellant in both the appeals is husband and the respondent is wife. The appellant filed H.M.O.P.No.149 of 2010, for a declaration that the marriage between him and the respondent solemnized on 24.06.2010, as null and void. The respondent filed H.M.O.P.No.155 of 2010, for restitution of conjugal rights.

4. The case of the appellant:

(i) The appellant and the respondent got married on 24.06.2010 as per Hindu Customs and Rites. It is an arranged marriage. The parents of the respondent through the paternal uncle of the appellant, viz., Ayyasamy, proposed the marriage. They came to the appellant's house and had discussions. The parents of the appellant and the appellant also visited the respondent's house. The appellant and the respondent talked to each other and the marriage was fixed with the consent of all. On 28.03.2010, in the ceremony held at Amaravathi Hall in Karaikudi, the appellant and the respondent got engaged. The parents of the appellant presented gold and diamond jewels to the respondent. After engagement, the appellant presented a mobile phone to the respondent. Whenever the appellant contacted the respondent over phone, she did not respond properly and was very quiet and withdrawn.

(ii) As per the customs, the appellant was invited to the marriage hall in the procession on the evening of 23.06.2010. The respondent came to the marriage hall after 30 minutes after the appellant's arrival. She was sad and crying. Similarly, at the time of marriage also, she was very sad and crying. After marriage, the appellant and his parents were going to their house. The respondent refused to accompany them and informed that she married the appellant only due to the compulsion of her father. By force, she was made to sit in the car along with the appellant. When they reached the Temple of their family deity, the respondent refused to get down from the car. She informed the appellant and others that she will commit suicide, if she was forced to accompany them to the appellant's house at Ramanathapuram. She refused to receive 'Prasadams' also. Therefore, all of them returned to the respondent's house at Karaikudi. The respondent's father apologised for the behavior of the respondent. He informed the appellant and others that he would persuade the respondent to accept the marriage. The parents of the appellant were forced to give advertisement in newspapers that the marriage reception at their place in Ramanathapuram, was postponed.

(iii) The appellant and his parents wanted to annul the marriage amicably and sent the family friends and paternal uncle Ayyasamy to the respondent's house. During discussions, the respondent and her parents agreed for annulling the marriage amicably. Contrary to this, the respondent and her father on the service.ecdn.gov.in/hservices/ https://hservices.ecdn.gov.in/hservices/ informed the family friends that they are not willing for annulling the marriage. The respondent informed that she is not willing to live with the appellant. At the same time, she

informed that she is not willing for annulling the marriage.

(iv) The respondent's parents, in the circumstances, expressed their unwillingness to co-operate for annulling the marriage. The respondent's father refused to return the gold and diamond jewels presented to the respondent. The appellant gave a complaint on 25.08.2010 to the Superintendent of Police, Sivagangai District. The respondent's father appeared before the Deputy Superintendent of Police, Karaikudi, who enquired the complaint and returned all the jewels presented to the respondent, but refused to take back the jewels presented to the appellant. He informed all that he would send his daughter to Chennai for counselling.

(v) The respondent filed W.P.(MD) No.11535 of 2010 before this Court, making false and defamatory allegations against the appellant. The same was reported in newspapers. The respondent was not willing to marry the appellant. This fact was suppressed by the respondent's family and consent of the appellant was thus, obtained by fraud. The marriage was not acted upon. The appellant apprehending that the respondent and her family members would make further false allegations and publish the same in newspapers and harass him and his family members, filed H.M.O.P.No.149 of 2010, for declaring that the marriage between the appellant and the respondent, performed on 24.06.2010, as null and void.

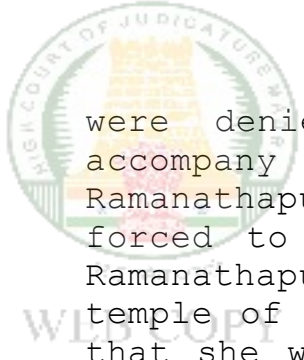
5. The case of the respondent:

(i) The marriage between the appellant and the respondent is an arranged marriage. The respondent gave her consent for the marriage. All the elders of both the families discussed and then only, arranged the marriage. The appellant and the respondent talked each other in person and gave their consent for the marriage. Then only, the marriage was performed with the consent of all.

(ii) It is not correct to state that the respondent was quiet and withdrawn when the appellant contacted her over phone after the engagement. On the other hand, they were talking freely for more than ten times in a day. During these talks, the appellant informed that he is a smoker and used to consume alcohol. He is suffering from cancer and heart problem and he is in love with another girl. The respondent informed this to her parents and they in turn, informed the same to the parents of the appellant.

(iii) The respondent and her mother accompanied the appellant and his mother to Chennai to purchase wedding saree and other articles. They stayed in Chennai for two days and made the purchases. The appellant and the respondent were also stayed together along with their mothers. No complaint was made against

(iv) The allegations that the respondent was sad and crying on the day before the marriage and on the date of marriage,



were denied. Similarly, the respondent did not refuse to accompany the appellant and his family members to their house at Ramanathapuram. It is not correct to say that the respondent was forced to sit next to the appellant in the car to proceed to Ramanathapuram. The appellant did not take the respondent to the temple of their family deity and the respondent did not threaten that she would commit suicide, if she was made to accompany them to Ramanathapuram, against her wish. On the other hand, she willingly accompanied them to go to their house at Ramanathapuram. On the way to Ramanathapuram, the appellant's mother made the respondent to get down from the car. She verified the jewels given to the respondent by her parents. She left the respondent on the road stating that the respondent's father failed to give the entire quantity of jewels, as promised and that she would take her to Ramanathapuram, only when the entire quantity of jewels are given as agreed upon. The respondent's father took her back to Karaikudi.

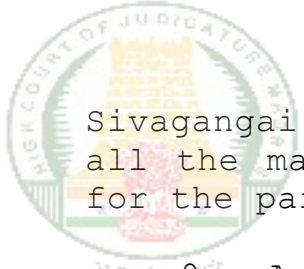
(v) The respondent or her father never agreed for annulling the marriage. The respondent is always willing to live with the appellant as a wife. The respondent filed W.P.(MD) No.11535 of 2010, as the appellant and his family members were threatening her and her father with the help of Goondas and police force, to sign the petition for divorce.

(vi) The respondent gave her consent for marrying the appellant willingly and hence, it is not correct to state that the appellant's consent was obtained by fraud, suppressing the fact that the respondent was not willing to marry the appellant. Therefore, she prayed for dismissal of H.M.O.P. filed by the appellant.

6. The respondent filed H.M.O.P.No.155 of 2010 for restitution of conjugal rights. She made the same averments as made in the counter filed in H.M.O.P.No.149 of 2010. The appellant filed counter making the same allegations as made in H.M.O.P.No.149 of 2010. Both the H.M.O.Ps. were heard together.

7. Before the Trial Court, both the appellant and the respondent let in oral and documentary evidence. The Trial Court, after considering the pleadings, evidence, judgments relied on and the arguments, held that the appellant is not entitled to a decree of declaration that the marriage performed between the appellant and the respondent on 24.06.2010, as null and void, but, granted a decree of divorce, on the ground that the respondent made false allegations against the appellant, which amounted to cruelty. The above said order was passed in H.M.O.P.No.149 of 2010. The learned Subordinate Judge, Devakottai, dismissed H.M.O.P.No.155 of 2010 filed by the respondent for restitution of conjugal rights.

[https://hcservices.courts.gov.in/hcservices/](https://hcservices.courts.gov.in/hcservices) the said common order, dated 11.09.2013, made in H.M.O.P.Nos.149 and 155 of 2010, the respondent filed H.M.C.M.A.Nos.4 and 5 of 2013 before the District Court,



Sivagangai. The learned District Judge, Sivagangai, considering all the materials on record and arguments of the learned counsel for the parties, allowed both the H.M.C.M.As.

9. Against the said common judgment and decree, dated 07.08.2014, made in H.M.C.M.A.Nos.4 and 5 of 2013, the appellant has filed the present civil miscellaneous second appeals.

10. Substantial questions of law:-

(i) C.M.S.A.(MD) No.8 of 2015 is admitted on the following substantial questions of law:

(a) Whether the appellate Court erred in not considering the non-consummation of marriage as observed by the trial Court?

(b) Whether the appellate Court erred in not considering the fraud and misrepresentation played by the respondent as a ground of nullity under 12(1)(c) as observed in Alka Sharma and Valsa Cases?

(c) Whether the appellate Court had erred in its observations regarding the respondent's willingness to rejoin and that the fraud played would not affect marital life?

(d) Whether the appellate Court had erred in stating that the appellant is not entitled to relief under the provisions of 13(1)(i-a)?

(ii) C.M.S.A.(MD) No.9 of 2015 is admitted on the following substantial questions of law:

(a) Whether the appellate Court erred in not considering the non-consummation of marriage as observed by the trial Court?

(b) Whether the appellate Court erred in not considering the fraud and misrepresentation played by the respondent obtaining the consent of the appellant by suppressing her non-consent to the marriage?

(c) Whether the appellate Court had erred in its observations regarding the respondent's willingness to rejoin and that the fraud played would not affect marital life?

(d) Whether the appellate Court erred in deciding on facts without appreciating the statement of witnesses and perusal of material facts?

11. The learned counsel for the appellant contended,

(i) that the first appellate Court failed to see that the consent of appellant was obtained by fraud suppressing the fact that the respondent was not willing to marry the appellant;

(ii) that the first appellate Court failed to consider the findings of the Trial Court that the unwillingness of the respondent is clearly visible in the marriage photos;



(viii) that the first appellate court failed to consider the various judgments cited and relied on by the learned counsel for the appellant.

(iv) that the first appellate court has properly appreciated all the materials on record and rightly allowed both the H.M.C.As. filed by the respondent.

13. After elaborate arguments, the learned counsel for the respondent submitted that the respondent is willing for divorce, without admitting the various allegations made against her. The learned counsel for the appellant agreed for a decree of divorce,



being granted, without deciding the issue on merits. Both the learned counsel appearing for the parties submitted that the contentions of the respective parties may be stated in the Judgment.

14. Considering the above submissions and the counter affidavit filed by the respondent, without deciding the issue on merits, C.M.S.A.Nos.8 and 9 of 2015 are allowed, setting aside the judgment and decree of the first appellate court, made in H.M.C.M.A.Nos.4 and 5 of 2013 and restoring the order of the learned Subordinate Judge, Devakottai, dated 11.09.2013, in H.M.O.P.Nos.149 and 155 of 2010 and there shall be a decree as per judgment of the learned Subordinate Judge, Devakottai. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The District Judge, Sivagangai District.

2.The Subordinate Judge, Devakottai.

+1 CC TO M/S.V.R.G.MOHAN, ADVOCATE IN SR.NO.16643

Common Judgment in
C.M.S.A.(MD) Nos.8 and 9 of 2015
Dated: 22.03.2016

CSL/AN-MP/SAR-I/24.05.2016 :7P/4C