

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Family Court Appeal Nos.105 of 2014 and 134 of 2015

Between

Tallam Suresh Babu, S/o Late Satyanarayana,
Aged about 32 years, Software Engineer,
R/o. D.No.15/77, P.B. Street, Kadapa City,
Kadapa District

... Appellant

and

T.Swetha Rani, D/o S.Chandrasekhar,
Aged 26 years, Occ: House Wife,
R/o. Habeebullah Street, Opp. Balaji Temple,
Kadapa City, Kadapa District

... Respondent

DATE OF JUDGMENT PRONOUNCED: 24-01-2018

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reports/Journals? Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

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Aged about 32 years, Software Engineer,
R/o. D.No.15/77, P.B. Street, Kadapa City,
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... Appellant

Vs.

\$ T.Swetha Rani, D/o S.Chandrasekhar,
Aged 26 years, Occ: House Wife,
R/o. Habeebullah Street, Opp. Balaji Temple,
Kadapa City, Kadapa District

... Respondent

! Counsel for Appellant: Mr. Y.V.N. Narayana Rao

Counsel for Respondent: Mr. P.Veera Reddy,
Senior Counsel, representing
Mr. Karri Murali Krishna

< Gist:

> Head Note:

? Cases referred:

1. 2007 (1) ALT 177
2. AIR 2016 Kant 169
3. (1970) 2 MLJ 429
4. (1938) 3 A.E.R.185
5. (1938) 4 A.E.R 696
6. (1954) 3 A.E.R 502
7. 1959) 3 A.E.R 389
8. (1961) 1 W.L.R 1481
9. AIR 1981 Del. 253
10. (1988) 4 SCC 247
11. 2005 (43) Civil CC (S.C.)
12. (2006) 3 SCC 778
13. (2011) 12 SCC 1
14. (2014) 1 SCC 225
15. 2017 (1) ALD 134

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Family Court Appeal Nos.105 of 2014 and 134 of 2015

Common Judgment: (per V.Ramasubramanian, J.)

Aggrieved by the dismissal of his own petition for annulment of marriage and the grant of a decree for restitution of conjugal rights at the instance of his wife, the husband has come up with the above appeals.

2. We have heard Mr. Y.V.N. Narayana Rao, learned counsel appearing for the appellant (husband) in both the appeals and Mr. P.Veera Reddy, learned Senior Counsel appearing for the respondent (wife).

3. The marriage of the petitioner and the respondent was solemnized on 31-01-2007 according to Hindu customary rites. Within 18 months of the solemnisation of the marriage, the appellant/husband filed a petition in O.P.No.95 of 2008 seeking annulment of the marriage on the ground that the respondent/wife did not allow him to have conjugal relationship and that when he took her for treatment, she was found to be suffering from Schizoform illness and that the enquiries revealed that the respondent/wife had been taking treatment for schizoid, making her unfit for sexual relationship and that the suppression of the same tantamounted to fraud, making the marriage liable to be annulled under Section 12 of the Hindu Marriage Act, 1955.

4. The respondent/wife resisted the petition for annulment on the ground that the families of the appellant and the respondent were known to each other for more than 50 years; that they were also related on the maternal side of the appellant; that right from the childhood, both families had decided to have them married; that the respondent even stayed in the house of the appellant when she was studying Intermediate; that after the death of the appellant's father, the mother and brother of the appellant started looking for an alliance elsewhere, which resulted in some sort of a depression for the respondent; that in that connection, the respondent was taken to Apollo Hospitals, Chennai, for treatment; that some time later, the attitude of the brother and mother of the appellant changed and they came forward to perform the marriage; that the betrothal took place in May, 2006 and the marriage was solemnized on 31-01-2007; that during this interregnum of about 7 to 8 months, the appellant used to talk to the respondent regularly on phone and they also used to attend parties and functions; that after marriage, the appellant was not interested in regular sexual relationship, but was interested only in oral sex; that the behaviour of the appellant again created disturbances in the mind of the respondent and hence her parents took both of them to a Neuro Psychiatrist by name Dr. Seshadri Harihar on 06-12-2007 and 07-12-2007 for consultation; that the appellant and the respondent were subjected to clinical

examination by one Dr. Sabiha Sultana and they were also advised to consult a Sexologist; that the appellant refused to have any consultation; that the abnormal behaviour of the appellant resulted in the revival of her Schizoform illness; that Schizoform illness is a curable disease and hence it cannot be a ground for annulment of marriage.

5. Before the Family Court, the appellant examined himself as P.W.1. He examined his elder brother as P.W.2, his paternal uncle as P.W.3 and a Psychiatrist working as Assistant Professor in Kurnool Medical College as P.W.4. The Wedding Card and Wedding photographs were marked on the side of the appellant as Exs.A-1 and A-2. The treatment record of the respondent issued by Apollo Hospitals, Chennai, was filed as Ex.A-3. The Neuro Psychological Report, dated 07-12-2007, of the respondent was filed as Ex.A-4. The Death Certificate of the appellant's father was filed as Ex.A-5.

6. On the side of the respondent, she was examined as R.W.1, her father was examined as R.W.2 and a Psychiatrist from Channai by name Dr. S.Nambi was examined as R.W.3. 15 documents were marked on the side of the respondent. Ex.B-1 was a prescription given by Dr. Seshadri Harihar on 01-4-2006. Two referral letters issued by Dr. Seshadri Harihar on 06-12-2007, one addressed to Dr. Sabiha Sultana and another addressed to Dr. Reddy were filed as Exs.B-2 and B-3. The Neuro Psychological reports issued by Dr. Sabiha Sultana in respect of the appellant and the

respondent were marked as Exs.B-4 to B-6. The call data relating to the mobile phone number of the respondent for the month of November, 2006 was filed as Ex.B-7. The photographs taken in the house of the appellant, on the occasion of a birthday party when the respondent was a student of Intermediate, were filed as Ex.B-14. Another set of photographs taken at the time of marriage of one Veena Kumari were filed as Ex.B-15.

7. The Certificate issued by Dr. S.Nambi (R.W.3) on 08-6-2009 was taken on record as Ex.X-1. The Discharge Summary issued by St. Isabel's Hospital on 08-6-2009, was taken on record as Ex.X-2. The investigation record was filed as Ex.X-3.

8. On the basis of the pleadings and the oral and documentary evidence, the Family Court came to the conclusion that the families of the appellant and the respondent were known to each other very closely for a long time and that there were even money transactions between the families and that therefore it cannot be said that the ill health of the respondent was not known to the appellant. On the basis of Ex.A-4, the Family Court also came to the conclusion that though the respondent was treated for depression at Apollo Hospitals, Chennai, in March, 2004, she became better by November, 2004 and that there was development in the health of the respondent within a month as per Ex.A-4. Hence, the Family Court concluded that the

ailment suffered by the respondent cannot be said to be incurable.

9. The Family Court held that the appellant ought to have had knowledge about the mental health of the respondent even before marriage, as otherwise he could not have taken her to the very same hospital for treatment after marriage.

10. On the evidence of P.W.4, the Family Court concluded that P.W.4 had prior acquaintance with the appellant and that the failure of the appellant to take steps to examine the doctor who treated the respondent was fatal to his case.

11. After rejecting the evidence of P.W.4, the Family Court analysed the evidence tendered by R.W.3 and the documents produced by him Exs.X-1 to X-3 and came to the conclusion that there was no mental illness as on 08-6-2009. The Family Court also concluded that even the appellant exhibited abnormal behaviour as per Ex.B-4.

12. Ultimately, placing reliance upon the decision of a Division Bench of this Court in **Dr. Kollam Padma Latha v. Dr. Kollam Chandra Sekhar**¹, the Family Court concluded that Schizophrenia has to be put on par with diseases like hypertension and diabetes and that therefore it cannot be taken to be incurable so as to enable the appellant to seek annulment of the marriage. The non-examination of

¹ 2007 (1) ALT 177

Dr. Seshadri Harihar and Dr. Sabiha Sultana was also put against the appellant and the Family Court dismissed the petition for annulment.

13. After the dismissal of the petition for annulment of marriage, the respondent/wife filed F.C.O.P.No.41 of 2012 for restitution of conjugal rights. The said petition was allowed by the Family Court by a judgment dated 13-4-2014.

14. As against the dismissal of his petition for annulment, the husband filed F.C.A.No.105 of 2014. As against the order for restitution of conjugal rights, the husband has come up with the other appeal F.C.A.No.134 of 2015.

15. We think that a decision on the appeal arising out of the petition for annulment of marriage, would naturally decide the fate of the appeal arising out of the petition for restitution of conjugal rights. Therefore, we shall take up F.C.A.No.105 of 2014 for consideration first. As we have indicated earlier, the appellant sought annulment of marriage on the sole ground that the respondent had been suffering from schizoid for about three years prior to the marriage and that by playing fraud upon the appellant and his family, the parents of the respondent got her married to him. The petition filed by the appellant in O.P.No.95 of 2008 contained certain averments, which formed the foundation for him to seek annulment. These averments, in brief, were:

(i) that after marriage, the respondent never allowed the appellant to have sexual intercourse;

(ii) that she was not even able to cook food and kept herself inside the bedroom by bolting the door;

(iii) that suspecting her behaviour, the appellant took her to Apollo Hospitals, Chennai and got her examined by a Neuro Psychiatrist by name Dr. Seshadri Harihar;

(iv) that it was at that time that the appellant came to know that the respondent was taking treatment for schizoid from March, 2004; and

(v) that since the disease is incurable and it was suppressed at the time of marriage, the appellant was forced to seek annulment.

16. Therefore, the appellant will have to stand or fall only on the strength of the above averments. Hence, it is necessary for us to see, both in terms of the art of law and the science of medicine, as to whether an annulment of marriage could be granted on the above pleadings.

17. Under Section 12(1) of the Hindu Marriage Act, 1955, the annulment of marriage can be sought only on any of the following grounds viz.,

(i) the non-consummation of the marriage owing to the impotence of the respondent,

(ii) the contravention of any of the conditions specified in Section 5(ii) of the Act,

(iii) the consent for the marriage was vitiated by force or fraud and

(iv) the pregnancy of the respondent through some other person at the time of marriage.

18. There is complete lack of clarity in the petition filed by the appellant in O.P.No.95 of 2008 as to the specific provision under which he was seeking annulment of the marriage. In paragraph-5 of the petition, the appellant claimed that the respondent's parents suppressed the treatment taken by the respondent in March, 2004 for Schizoid and that the same tantamounted to a fraud upon the appellant. This averment was followed by yet another averment to the effect that the respondent was not fit for sexual intercourse on account of Schizoid and that the same tantamounted to impotence of the respondent. These averments were followed by another averment to the effect that the disease suffered by the respondent is incurable.

19. Therefore, the appellant was not sure as to whether his case would fall under Clause (a) or Clause (b) or Clause (c) of sub-section (1) of Section 12. Section 12(1) reads as follows:

“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

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.”

20. Certainly the case of the appellant would not come within Clause (d) of sub-section (1) of Section 12. Unfortunately for the appellant, his case would not also fall under Clause (a), since the entire evidence, oral and documentary was focussed only on the mental health condition of the respondent and the non-consummation of the marriage. There was no attempt to prove that the non-consummation of the marriage was due to the impotence of the respondent. There is no proof, oral or documentary, to establish the impotence of the respondent. Therefore, the case of the appellant would not fall under Clause (a).

21. To make the case fall under Clause (c), the appellant had to prove that his consent for the marriage was obtained by force or by fraud. This is not a case where the appellant pleads that his consent was obtained by force. At the most the case may fall only under the category of fraud.

22. But the fraud pleaded by the appellant so as to make the case come under Clause (c), should be either as to the nature of the ceremony or as to any material fact or the circumstance concerning the respondent.

23. If a case is sought to be brought within the parameters of Clause (c), then the person attempting to do so, should also satisfy the conditions prescribed in Clause (a) of sub-section (2) of Section 12. This is why the appellant pleads that the fraud was discovered in December, 2007 and that within one year, he presented the petition for annulment of marriage in June, 2008.

24. The claim of the appellant that he discovered the fraud as to a material fact or as to a circumstance concerning the respondent only in December 2007, after 11 months of marriage, is belied by circumstances. In paragraph-4 of his petition, the appellant claimed that he took the respondent to Apollo Hospitals, Chennai and got her examined by a Neuro Psychiatrist by name Dr. Seshadri Harihar and that it was only then that he came to know about the ailment suffered by the respondent. This averment was reiterated by the appellant in paragraph-3 of the Affidavit filed in lieu of chief-examination as P.W.1.

25. Even according to the appellant, the respondent took treatment for schizoid from the very same Neuro Psychiatrist viz., Dr. Seshadri Harihar at Apollo Hospitals, Chennai. Therefore, the decision of the appellant to take the

respondent in December, 2007 to the very same Neuro Psychiatrist at the very same hospital, cannot be by mere coincidence. Considering the fact that the families of the appellant and the respondent were known to each other for decades and that they were also related to each other, the claim that the discovery took place only in December, 2007 is completely unbelievable. As rightly pointed out by the Court below, the appellant completely denied the friendship/relationship between the two families, even in the Affidavit filed in lieu of chief-examination. But in the course of cross-examination, the close connections between the two families were elicited from the appellant as P.W.1. Therefore, the appellant's claim that he discovered the past history of the respondent only in December 2007, has to be taken with a pinch of salt, as he had completely denied even the relationship and friendship between the families for a long time.

26. As seen from Section 12(1)(c), the fraud that vitiated the consent of the petitioner to the marriage, should be in connection with the nature of the ceremony or as to any material fact or circumstance concerning the respondent. Even if we go by the pleadings and evidence let in by the appellant, a solitary instance of the respondent taking treatment in March, 2004 from Dr. Seshadri Harihar of Apollo Hospitals, Chennai, may not be a material fact or circumstance concerning the respondent, so as to assume the

character of fraud that could vitiate the consent of the appellant.

27. The material fact or circumstance concerning the respondent, the suppression of which could tantamount to a fraud in terms of Section 12(1)(c) should be of such a nature that the respondent thought fit to suppress the same from the petitioner, lest it may affect his consent. One solitary instance of a treatment in March, 2004 cannot assume such a proportion. Moreover, the respondent filed Ex.B-1 Certificate dated 01-4-2006 issued by Dr. Seshadri Harihar of Apollo Hospitals, Chennai. It was recorded therein that the respondent did not have any complaints. Therefore, it was possible that the respondent did not consider this as a material fact or circumstance, the suppression of which may tantamount to fraud. Hence, we do not think that the case on hand would fall under Clause (c) of sub-section (1) of Section 12.

28. Having excluded Clauses (a), (c) and (d), what remains, is only Clause (b) of sub-section (1) of Section 12. Under Clause (b), the annulment of a marriage can be sought if the marriage was in contravention of the condition specified in Section 5(ii). Section 5(ii) reads as follows:

“5. Conditions for a Hindu marriage: A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

- (i)
- (ii) at the time of the marriage, neither party—

- (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
- (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
- (c) has been subject to recurrent attacks of insanity;”

29. To make a case fall within Section 5(ii), the party seeking annulment should establish any of the following:

(i) that either of the parties was incapable of giving a valid consent to the marriage, in consequence of unsoundness of mind,

(ii) that either of the parties, though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children, or

(iii) that either of the parties has been subject to recurrent attacks of insanity.

30. In the case on hand, it is not the case of the appellant that he was suffering from any one of the above. It is not the case of the appellant that the respondent was incapable of giving a valid consent to the marriage in consequence of unsoundness of mind. Therefore, the case would not fall under Section 5(ii)(a).

31. It is not the case of the appellant that the respondent has been subject to recurrent attacks of insanity. Therefore, the case would not fall under Section 5(ii)(c).

32. To make the case fall under Section 5(ii)(b), the appellant should have pleaded and proved two things viz.,

(a) that the respondent was suffering at the time of marriage from a mental disorder and (b) that the mental disorder was of such a kind and to such an extent that made her unfit for marriage and the procreation of children.

33. Let us assume for the sake of argument that the respondent had been suffering from mental disorder, at the time of marriage. But even then the appellant failed either to plead or to prove that the mental disorder suffered by the respondent was of such a kind and to such an extent as to make her unfit for marriage and the procreation of children.

34. Therefore, the appellant could not even make the case come under Section 5(ii)(b), so as to invoke Section 12(1)(b) for its annulment.

35. It must be remembered that ***the tests for annulment of a marriage are more stronger than the tests for dissolution of a marriage***. To make a case fall under Section 12(1)(b), a person should establish either unsoundness of mind affecting consent or mental disorder of such a kind and extent that made the respondent unfit for marriage and procreation of children or the recurrent attacks of insanity. To make a case fall under Section 13(1)(iii), it is enough if the petitioner proves that the respondent has been incurably of unsoundness of mind or that the respondent had been suffering continuously or intermittently, a mental disorder of such a kind and to such an extent that the

petitioner cannot reasonably be expected to live with the respondent.

36. A clear distinction is maintained between Section 12(1)(b) and Section 13(1)(iii) of the Hindu Marriage Act, 1955. This is in view of the fact that serious consequences flow out of annulment of marriage.

37. The evidence on record shows that the respondent received treatment for Schizoid. According to literature, Schizoid is not the same as Schizophrenia. While Schizophrenia may manifest itself in the form of persistent psychotic symptoms, Schizoid does not. Therefore, Schizophrenia is serious in nature than Schizoid.

38. According to ***Stedmans Medical Dictionary*** - Schizoid means a person who is socially isolated, withdrawn, having few (if any) friends or social relationships; resembling the personality features characteristic of schizophrenia, but in a milder form. In ***“Comprehensive Textbook of Psychiatry” (6th ed, Vol.2)*** -the learned authors Kaplan and Sadock point out that Schizoid Personality Disorder is distinguished from schizophrenia, delusional disorder, and affective disorder with psychotic features based on periods with positive psychotic symptoms, such as delusions and hallucinations. In ***“Psychiatry for Medical students”*** by Robert J. Waldinger it is stated that Schizoid Personality Disorder must be differentiated from *Schizophrenia*. The presence of a thought disorder with persistent hallucinations

and/or delusions at some time during the course of schizophrenia differentiates it from the schizoid personality disorder. Also, schizoid individuals usually function better than schizophrenic people in work situations.

39. In fact, history is replete with instances of persons suffering from even paranoid schizophrenia, becoming great achievers. One such case has found its way even to the law books (if not to the law courts, about which there are no records), with the Karnataka High court referring to the same in one of its judgments. In Para 24 of its decision in **Shilpa vs. Praveen**², the Karnataka High Court, recorded the following:

“At this stage, we are reminded of a story of success portrayed by Sylvia Nasar in the Biography, ‘A Beautiful Mind’ (published by Simon & Schuster, as well as a Film of the same name) of John Forbes Nash Jr., an American Mathematician, born on June 13, 1928. He started showing symptoms of mental illness and spent several years at Psychiatric Hospitals and was treated for paranoid schizophrenia. After 1970, he refused further medication and his condition improved. Thereafter he was never committed to Hospital again. He recovered gradually with the love and care of his divorced wife whom he remarried in 2001. He gradually returned to academic work by mid-1980s. He was awarded the 1994 Nobel Memorial Prize in Economic Sciences for the thesis, which earned him Ph.D. Degree in 1950. He was both a Mathematician and Economist. He made groundbreaking work in the area of real algebraic geometry. He published number of theorems to his credit and was awarded prestigious Abel Prize in 2015.”

40. One of the earliest cases to come up before an Indian court, for the dissolution of marriage on the ground of paranoid schizophrenia, was in **Gnanambal vs. O.R.**

² AIR 2016 Kant 169

Selvaraj³. In that case, the husband filed an Application for dissolution of marriage on the ground that the wife was incurably of unsound mind as she was suffering from paranoid schizophrenia. The Trial Court granted a decree and the same was confirmed on appeal by the Additional Judge, City Civil Court, Madras. The wife filed a second appeal on the file of the Madras High Court. Tracing the history behind section 13(1) (iii) of the Hindu Marriage Act, 1955 and the usefulness of the English precedents on the question, the Madras High Court made the following observations :

“The framers of this Provision have taken into account the provisions of the English Matrimonial Causes Act, 1950. The English Act of 1950 reproduced what was contained in the Matrimonial Causes Act, 1937, and has been reproduced in the Matrimonial Causes Act, 1965. According to the English Act, a petition for divorce can be presented on the ground that the respondent is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. In as much as important phrases found in the Indian enactment have been taken from the English enactment, English decisions would be of valuable guide in interpreting the Indian enactment, as Indian case law on the Indian enactment is not much. It would be seen from a perusal of the Indian enactment that three essential things should be established by the party seeking divorce, and they are (1) that the other party to the marriage is of unsound mind; (2) that the unsoundness of mind is incurable and; (3) that the incurable unsound mind was there for a period of not less than three years immediately preceding the presentation of the petition for divorce.”

41. After pointing out the rationale behind looking towards the west for precedents in matters of this nature, the Madras High court took note of the following decisions of the

³ (1970) 2 MLJ 429

English Courts. The first case was that of **Swettenham vs. Swettenham**⁴. In that case, the parties got married in the year 1878 and thereafter from time to time the wife was certified and re-certified to be insane. The husband petitioned for divorce under the Matrimonial Causes Act, 1937. The Court held that the wife was incurably of unsound mind since In spite of two considerable periods, during which the wife had been restored to mental health, she continued to be insane. The next case cited by the Madras High court was that of **Randall vs. Randall**⁵, where the court held that it is not necessary to lay down any test about the degree of unsoundness of mind for the purposes of the Matrimonial Causes Act, 1937. The case next in line was of **Swymer vs. Swymer**⁶, where one of the important questions considered was as to what would constitute continuous period of *five years* within the meaning of the Matrimonial Causes Act, 1950. There, the husband was admitted to a Mental Hospital in 1925 and was discharged 26 years later and was later re-admitted to the same hospital as a voluntary patient. In 1953, he broke his leg in an accident and owing to lack of suitable facilities for treatment at the mental hospital he was sent to a general hospital which was not an institution or a place approved for the purposes of the Mental Treatment Act, 1930. He returned to the Mental Hospital in May 1953.

⁴ (1938) 3 A.E.R.185

⁵ (1938) 4 A.E.R 696

⁶ (1954) 3 A.E.R 502

In October 1953, the wife presented a petition for divorce on the ground that the husband was incurably of unsound mind and had been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. On account of the period during which the husband was having treatment in a general hospital, the trial court rejected the wife's petition holding that the husband was not continuously under the care and treatment for at least *five years* immediately preceding the presentation of the petition. Reversing that decision it was held in appeal that the word continuously should be read not merely with a common sense approach but also keeping in mind the true object and intention of the Act. The fourth English decision referred to by the Madras High court in **Gnanambal** was **Whysall vs. Whysall**⁷. This decision laid down the test to be applied in deciding the question whether a person is incurably of unsound mind. The court held that in deciding whether a person is "incurably of unsound mind", the test to be applied is whether by reason of his mental condition he is capable of managing himself and his affairs and if not, whether he can hope to be restored to a state in which he will be able to do so. Finally, the Madras High court also took note of the decision in **Chapman vs Chapman**⁸ relied upon by the wife's counsel. In that case the husband was suffering from paranoid schizophrenia. The evidence

⁷ 1959) 3 A.E.R 389

⁸ (1961) 1 W.L.R 1481

established that after the discharge from the hospital he was no longer subject to any reception order. He was no longer under any medical treatment or care. He was able substantially to control his condition by taking drugs. He was able to work and earn wages and was capable of securing work. It was therefore, held that the wife had failed to establish that her husband was incurably of unsound mind.

42. If Madras High court can be said to have taken a liberal view in the aforementioned judgment, the other High courts appear to have taken both views. In **Asha Srivastava v. R.K. Srivastava**⁹, the husband sought annulment on the ground of suppression of Schizophrenia by the wife. The Trial Court granted annulment. The Delhi High Court held that a marriage cannot be annulled on the basis of any and every misrepresentation or concealment. But the concealment about the ailment of Schizophrenia was held by the court as amounting to fraud, since it was opined by the doctor that the said mental illness was not curable.

43. In **Ram Narain Gupta v. Rameshwari Gupta**¹⁰, the husband sought dissolution of marriage under Section 13(1)(iii) on the ground that the wife was suffering from Schizophrenia. The Trial Court granted dissolution. But the High Court reversed the decision on the ground that the husband failed to establish that the mental illness of the wife was of such a kind and intensity as to justify a reasonable

⁹ AIR 1981 Del. 253

¹⁰ (1988) 4 SCC 247

apprehension that it would not be possible or safe for the appellant to live with the respondent. To come to the said conclusion, the High Court relied upon a judgment of the Calcutta High Court in *Rita Roy v. Sitesh Chandra* (AIR 1982 Cal 138) wherein it was held that each case of Schizophrenia had to be considered on its own merits. When the matter was taken to the Supreme Court by the husband, the Supreme Court pointed out that all mental abnormalities are not recognized as grounds for the grant of divorce and that if mere existence of any degree of mental abnormality could justify the dissolution of a marriage, very few marriages would indeed, survive in law. Insofar as Schizophrenia is concerned, the Supreme Court made certain observations in paragraphs-25 to 27 of its judgment in **Ram Narain Gupta**. It may be useful to extract paragraphs-25 to 27 of the decision of the Supreme Court as follows:

“25. ‘Schizophrenia’, it is true, is said to be difficult mental affliction. It is said to be insidious in its onset and has hereditary predisposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid states, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

26. “Schizophrenia” is described thus:

A severe mental disorder (or group of disorders) characterized by a disintegration of the process of thinking, of contact with reality, and of emotional responsiveness.

Delusions and hallucinations (especially of voices) are usual features, and the patient usually feels that his thoughts, sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes; hebephrenic, which starts in adolescence or young adulthood (see hebephrenia); paranoid, characterized by prominent delusion; and catatonic, with marked motor disturbances (see catatonia).

Schizophrenia commonly – but not inevitably – runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation, and environmental stress can precipitate illness.”

27. But the point to note and emphasise is that the personality disintegration that characterises this illness may be of varying degrees. Not all schizophrenics are characterised by the same intensity of the disease. F.C. Redlich and Daniel X. Freedman in “*The Theory and Practice Psychiatry*” (1966 edn.) say:

Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living (p. 252)

Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? *Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission.* The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity (p. 465) (emphasis supplied)”

44. Therefore, it is clear from the earliest decision of the Supreme Court on this issue that ***not all Schizophrenics***

are characterised by the same intensity of the disease and that some patients recover, apparently completely.

45. In ***Princy v. Dominic***¹¹, the Supreme Court was concerned with yet another case of Schizophrenia. The Court held that Schizophrenia, commonly – but not inevitably, runs a progressive course and that the prognosis has been improved in recent years with drugs and by vigorous, psychological and social management and rehabilitation.

46. In ***Vinita Saxena v. Pankat Pandit***¹², the wife sought dissolution of marriage on the ground that the husband suffered from insanity and was guilty of mental and physical cruelty. The Supreme Court devoted a full paragraph expounding what Schizophrenia is about, its causes, symptoms and how the same may affect the marital tie. But eventually, the Supreme Court granted dissolution of marriage on certain humane considerations listed out in the fourth last paragraph of the report.

47. In ***Pankaj Mahajan v. Dimple***¹³, the husband sought divorce on the ground that the wife was suffering from incurable form of Schizophrenia. The Trial Court granted divorce, but the High Court reversed the same. When the husband appealed to the Supreme Court, the Supreme Court predominantly went by the evidence relating to cruelty and granted dissolution of marriage.

¹¹ 2005 (43) Civil CC (S.C.)

¹² (2006) 3 SCC 778

¹³ (2011) 12 SCC 1

48. In **Kollam Chandra Sekhar v. Kollam Padma Latha**¹⁴, the husband sought divorce on the ground of Schizophrenia. The Supreme Court refused relief on the ground that there was no sufficient evidence and that any person may have bad health, for no fault of theirs. However, this decision turned down facts and not really on the purport of Schizophrenia.

49. In **Challa Surya Prabha v. Challa Diwakar Venkata Ram**¹⁵, the husband sought divorce both on the ground of cruelty and on the ground that the wife was suffering from Schizophrenia. The Trial Court granted a decree of dissolution of marriage. While confirming the same, a Division Bench of this Court held on facts that the wife was suffering from an aggravated form of Schizophrenia causing injuries to the body of the petitioner and that therefore he cannot reasonably be expected to live with the wife.

50. As we have pointed out elsewhere, the statutory prescription in the Hindu Marriage Act is a replica of the English Matrimonial Causes Act, 1937 (which later got revamped in 1950 and 1965). This is why our courts have cited the English precedents where some useful tests were laid. In **Whysall v. Whysall**, (which was cited by the Madras High court as well as the Supreme court) the husband who was suffering from Paranoid Schizophrenia, was certified to

¹⁴ (2014) 1 SCC 225

¹⁵ 2017 (1) ALD 134

be insane and he entered a mental hospital in 1952. In 1958, the wife filed a petition for divorce on the ground that the husband was incurably of unsound mind. Relying upon the decision in **Randall v. Randall**, the Court held in **Whysall** that the test to be applied to the word “incurably” is to see whether that spouse could hope to be restored to a state in which he/she was capable of managing his/her self and his/her affairs. The decision in Whysall was followed in **Chapman v. Chapman**.

51. Keeping the principles of law laid down in the English as well as Indian decisions, if we come back to the case on hand, it could be seen that the appellant/husband did not produce any convincing evidence to show that the wife was suffering from a Schizophrenic disorder of such an extent that the case would pass the test in **Whysall** and **Chapman**. In fact, the evidence of the wife as R.W.1 in the petition for annulment, is cogent and appears to be that of a person who was on the path to recovery.

52. In an article titled “Schizophrenia and Divorce”, Prof. P.M.Bakshi, has stated the following:

“One type of mental ill health is called "schizophrenia" — a much misunderstood word. It is derived from Greek schizein = to divide -phren - mind. It comprises a group of diseases identified by symptoms of emotional abnormality, thought disorder, disturbances of motivation, stupor or catatonia and delusions often associated with hallucinations. Its causes are unknown and it is not curable. Schizophrenia is not fatal, but about 20 per cent of all schizophrenics attempt suicide and life expectancy amongst schizophrenics is probably less than half of that of the general population. Roughly one quarter of all schizophrenics suffer only one acute attack and are thereafter normal. In about one half,

there are remissions or symptom-free periods, but the illness recurs. After the third or fourth recurrence, the patient is usually chronically ill for the rest of his life. The remaining 25 per cent of schizophrenics are chronically ill from the outset and must be continuously hospitalised (Richard B. Fisher, Dictionary of Medical Health 217,218 (1980))

Schizophrenia can be diagnosed only because of its symptoms. Despite its relative severity, there are borderline cases of people with **schizoid** characteristics who are able to carry on relatively normal lives given a measure of support from those close to them. Schizophrenia was identified by Kraepel in 1896. He called it "dementia praecox (early madness), because the symptoms appear more often in adolescents and young adults than in other age groups. In 1911, Bleuler established the name 'schizophrenia'. He compared studies of many patients by various doctors in different countries, and found that one symptom, the splitting of intellectual activity from emotional response, seemed to be almost, if not absolutely, universal. Typically, the patient's intellect is relatively unclouded. He is aware of the nature of pain, fear, anger or love, and when he senses these emotions himself, he is alive to their content and object. But he cannot feel the emotions of others. Inflicting pain on others is meaningless. Only a minority of schizophrenics are aggressive or dangerous, and those few act only occasionally. But when they strike, they do so with utter ruthlessness. Schizophrenia means a division of facets of a normal mind, rather than the presence of two or more personalities, though multiple-personality may also betoken the disease.

On the whole, the incidence of the disease is higher in fraternal twins than in the general population, and much higher in identical twins. Fraternal twins develop from two ova and are likely to develop the same traits as any other siblings. Identical twins develop from a single ovum and can be genetically identical individuals. Thus, if a characteristic is inherited, both the identical twins are likely to have acquired it, and fraternal twins are about as likely to inherit it as any other brother or sister. One more curious extraneous fact has never been explained: a majority of schizophrenics are born in the first half of the year, (At Pg. 223 of Richard B. Fisher, Dictionary of Medical Health (1980))

It is thus clear that schizophrenia, speaking medically, can, at times, be a serious disease. Nevertheless, to enable a spouse to obtain matrimonial relief on the ground of this or any other type of mental ill health, the law (as incorporated in Hindu Marriage Act) requires that the disease should be of such a quality that the petitioning spouse cannot be reasonably expected to live with the person suffering from the disease. This legislative approach has a rationale. Matrimonial law is concerned with human conduct or human situation, only if, and insofar as, it affects matrimonial happiness. In assessing the effect on matrimonial happiness the legislature has adopted the test of reasonableness. This keeps the statute free from rigid, mechanical tests. It also

leaves the judiciary an element of elasticity which, inter alia, enables the court to adjust the relief according to

(i) developments in medical science;

(ii) appearance of new or aggravated disease; and unexpected or unusual mental symptoms.

The context in which the idea of unsoundness of mind as "mental disorder" occur in matrimonial law as grounds for dissolution of a marriage, requires the assessment of the degree of the "mental disorder". Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for the grant of divorce."

53. Therefore, we are of the considered view that the appellant failed to establish any of the grounds mentioned in Section 12 of the Hindu Marriage Act, 1955, to enable him to get a decree of annulment. Hence, the husband's appeal F.C.A.No.105 of 2014 is dismissed confirming the judgment and decree of the Family Court in O.P.No.95 of 2008.

54. Coming to F.C.A.No.134 of 2015 arising out of the decree for restitution of conjugal rights, it is seen that the main ground on which the husband refused to take the wife was that she was suffering from Schizoid and that the same made her incapable of performing conjugal obligations. But the petition for annulment filed by the husband on the very same ground has been rejected by us. Therefore, there is no alternative but to confirm the decree for restitution of conjugal rights. Hence, F.C.A.No.134 of 2015 is dismissed. The miscellaneous petitions, if any, pending in these appeals shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

24th January, 2018.

Note:- L.R. Copy to be marked.
(B/o) Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Family Court Appeal Nos.105 of 2014 and 134 of 2015
(per VRS, J.)



24th January, 2018.
(Ak)