

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.07.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.NO.13 OF 2016

AND

CMP.NO.5605 OF 2016

D.Radha ... Appellant/Respondent

-vs-

D.Umakumar ... Respondent/Petitioner

Memorandum of Grounds of Civil Miscellaneous Second Appeal filed under Section 100 of CPC read with Section 28 of the Hindu Marriage Act against the fair and decreetal order dated 06.11.2015 passed in CMA.No.19 of 2014 by the Principal District Judge, Tiruvallur reversing the judgment made in HMOP.No.270 of 2010 on the file of the learned Subordinate Judge, Poonamallee dated 11.03.2014.

For Appellant :: Mr.S.Sathiyarayanan

For Respondent :: No appearance

JUDGMENT

The present Civil Miscellaneous Second Appeal has been filed against the decree and judgment dated 06.11.2015 passed in CMA.No.19 of 2014 by the Principal District Judge, Tiruvallur reversing the judgment made in HMOP.No.270 of 2010 on the file of the learned Subordinate Judge, Poonamallee dated 11.03.2014.

2. The short facts of the case are as follows:

The appellant is the wife and the respondent is the husband. After the marriage was solemnized between them as per the Hindu Rites and Customs on 12.02.2010 at Agni Muthamman Thirumana Mandapam at Senneerkuppam, they got separated and the appellant wife was driven out from the matrimonial home stating various allegations that she was never co-operating with her husband since she was suffering from epilepsy disease. Therefore, the respondent husband filed HMOP.No.270/2010 before the Subordinate Judge, Poonamallee, seeking divorce.

3. A counter affidavit has been filed by the appellant wife that the disease epilepsy cannot be a ground for divorce. Even, when the brother of the respondent husband intervening in the matrimonial affairs of the appellant, asking her to get a check up in the MIOT Hospital to prove that she is medically fit for marriage life, the appellant wife agreed to the same and ready to undergo any medical test. But the matter was taken up by filing HMOP.No.270/2010 before the learned Subordinate Judge, Poonamallee. By an order dated 11.03.2014, the learned Judge disagreeing with the ground of epilepsy, dismissed the HMOP.No.270/2010. Thereafter, the respondent husband filed CMA.No.19 of 2014 before the learned Principal District Judge, Tiruvallur. The learned Principal District Judge taking a stand that the appellant-wife has been subjected to recurable epilepsy that was intervening with the matrimonial life of the husband, accepting the said ground, allowed the appeal by judgment and decree dated 06.11.2015 granting divorce on 11.03.2014. Aggrieved by the same, the appellant wife has filed the present Civil Miscellaneous Second Appeal before this Court.

4. Immediately, a notice was issued to the respondent husband on 18.12.2015 putting him on notice that as against the order passed on 06.11.2015 in CMA.No.19 of 2014, a Civil Miscellaneous Second Appeal has been preferred. On receipt of the notice, the respondent husband has also filed a Caveat on 24.12.2016 and knowing pretty well that the appeal has been pending, he has contracted a second marriage on 10.03.2016. Subsequently, when the matter was taken up for hearing, the stay application was pressed into service and this Court has also granted stay on 15.4.2016 against the judgment and decree of the I Appellate Court that the judgment and decree passed by the I Appellate Court cannot be acted upon. Therefore, according to the appellant, the marriage contracted by the respondent on 10.03.2016 is a nullity. Hence, the judgment and decree passed by the learned trial court has to be restored by setting aside the impugned judgment and decree.

5. While admitting the present Civil Miscellaneous Second Appeal, the following Substantial Questions of law have been framed:

1. Whether the finding of the lower appellate court that the appellant herein/respondent (wife) is suffering from epilepsy is perverse?

2. Whether the ground of epilepsy is available under the provisions of the Hindu Marriage Act, 1955, after the amendment removing the said term epilepsy from Section 5(2) of the said Act by Act 39 of 1999 as a ground for seeking annulment of marriage?

6. Heard the learned Counsel on either side.

7. This Court is unable to find any justification or merit in the present appeal. The reason being that when the trial court has dismissed the HMOP.No.270/2010 on 11.3.2014 holding that no ground was made out for grant of divorce and the respondent-husband has not substantiated any ingredients for grant of divorce as per Section 12 of the Hindu Marriage Act for annulling the marriage on the ground of fraud, the reason given by the learned I Appellate Court in the impugned judgment that the the appellant and their parents have failed to disclose the illness of their daughter before getting consent from the respondent husband for marriage is wholly acceptable. Moreover epilepsy is not a ground for divorce. The allegation made by the respondent that it was the illness of epilepsy that was suppressed before the marriage cannot be termed as a ground for divorce, this has been completely overlooked whereas the finding given by the learned Principal District Judge, Tiruvallur shows that the evidence given by the respondent-R.W.1, the respondent's father R.W.2 and the mother of the respondent R.W.3 would clearly establish that the appellant was suffering from nervous ailment which requires continuous treatment. Although the above fact was claimed to have been disclosed to the respondent herein and his family members before marriage, it was totally denied by the respondent and his family members. There was no evidence to show that this fact was disclosed to the respondent family at any point of time before marriage.

8. Furthermore, considering the other evidence produced by the respondent, the learned I Appellate Court came to the conclusion that when the appellant immediately after the marriage along with the respondent have gone to Tirupathi, even on the third day of marriage i.e. on 15th night itself, she has fallen sick and taken for treatment to the hospital. Even the medical records relied on by the respondent, namely, Ex.P.24 to Ex.P.26 clearly show that the appellant is suffering from seizure disorder since 2001 and under continuous treatment. Ex.P.24 Report given by the Heavy Vehicle Factory Hospital dated 31.07.2004 clearly shows that the appellant had been suffering from epilepsy and it has recurred 5 to 6 times in a year even prior to the date of said document i.e. 31.7.2004 and she has been taken to the hospital because of the occurrence of the epilepsy on the previous day on 30.07.2004. Even the other document, namely, Ex.P.25 series dated 01.12.2016 would also indicate that the appellant had a history of vomiting after eating and became non-responsive for breath. After screening through the medical documentary evidence, the learned I Appellate Court has come to the conclusion that the epilepsy suffered by the appellant was successfully concealed from being brought to the notice of the respondent husband and his family before marriage. Therefore, accepting the application filed by the husband, the I Appellate Court came to the conclusion that

there was a fraud committed on the respondent by the appellant and annulled the marriage. It is no doubt true that after the amendment, the ground of epilepsy that was available under the provisions of the Hindu Marriage Act was removed from dissolution of marriage. But when the said ailment would continue, causing disturbance to the matrimonial life and also causing mental cruelty to the members of the family, more particularly, to the husband, the husband is always having a right to complain that he has been suffering from mental cruelty due to the continuance of epilepsy suffered by his wife. Therefore, when admittedly no evidence has been produced before any courts below to show that the wife has been perfectly cured from the epilepsy, both the substantial questions of law are answered against the appellant that she has not been perfectly recovered from the ailment of epilepsy and the continuance suffering from epilepsy would definitely cause mental cruelty to the husband.

9. The second contention made by the learned Counsel for the appellant that the respondent husband, after obtaining a decree for divorce on 06.11.2015 passed by the I Appellate Court, has also contracted the second marriage on 10.03.2016, clearly shows that this appeal becomes infructuous because in view of no stay granted by this Court, the respondent husband has also contracted the second marriage. Therefore, I find no merit in the present appeal.

10. In the result, the Civil Miscellaneous Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

1. The Principal District Judge, Tiruvallur.
2. The Subordinate Judge, Poonamallee.
3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.G.Thiyagarajan, Advocate, S.R.No.55690

C.M.S.A.No.13 of 2016

SAI (CO)
CS/14/02/2020