

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.27 of 2014

R.Valarmathi ... Appellant/ Respondent/ Respondent

Vs.

P.Srinivasan ... Respondent/ Appellant/ Petitioner

Civil Miscellaneous Second Appeal is filed under Section 100 of Civil Procedure Code Section 28 of Hindu Marriage Act, against the Judgment and Decree passed in C.M.A.No.43 of 2013 on the file of the First Additional District Court, Erode, dated 30.06.2014 reversing the fair and final order dated 11.03.2013 passed in H.M.O.P.No.277 of 2008 on the file of the learned Principal Sub Court, Erode.

For Appellant : Mr.Kaithaimalai Kumaran

For Respondent : Mr.V.P.Sengottuvel

J U D G M E N T

The appellant has filed the present Civil Miscellaneous Second Appeal against the Judgment and Decree passed in C.M.A.No.43 of 2013 on the file of the First Additional District Court, Erode, dated 30.06.2014 reversing the fair and final order dated 11.03.2013 passed in H.M.O.P.No.277 of 2008 on the file of the learned Principal Sub Court, Erode.

2. The facts of the case in a nutshell, leading to the filing of this appeal are as follows:- (i) The marriage of both the parties viz., the appellant and the respondent was solemnized as per the Hindu Rites and customs on 22.10.2007 at Easwaramurthy Hall, Perundurai road, Erode. The respondent presented 5 sovereigns of jewels and sarees worth of Rs.20,000/- at the time of betrothal and marriage

expenses were shared equally by both the families. After their marriage, the appellant has not behaved as a normal wife and refused to involve in a normal matrimonial life and she seems to be a moody type not in a normal movement with the respondent and his family members. The respondent had enquired about the same with the appellant and her family members. The appellant's father conveyed that she was possessed with ghost while she fell down along with her mother driving her two wheeler near a grave yard and it could be cured by taking her to temple. The respondent took the appellant for treatment. Thereafter, the respondent came to know that the appellant was under treatment for Schizophrenia for the past 5 years. The respondent had taken her to the appellant's parents house for further treatment to cure her. But without curing the disease, she was again and again left at the respondent's house frequently. The appellant has persistently treated the respondent with such cruelty that it caused a reasonable apprehension in the mind of the respondent that it will be harmful and injurious for the respondent to live with the appellant. Hence the respondent sent a registered legal notice on 01.07.2008 seeking for divorce.

3. Denying the averments, the appellant had filed a counter statement and stated that at the time of marriage the appellant's parents have presented 40 sovereigns of jewels and house hold articles worth Rs.25,000/- and a sum of Rs.50,000/- towards pottyanam. The marriage was consummated between the respondent and the appellant. The appellant was taken treatment only for giddiness when she had tension. The appellant is a normal lady and she has no mental disorder as alleged by the respondent. The appellant's parents have disclosed all the facts before conducting the marriage and the respondent has also taken the appellant to their family doctor and obtained a report from him. The Doctor states that the appellant was not affected by any disease of mental disorder and was treated for tension and now that she is normal. After satisfaction of the Doctor's report only, the respondent had married the appellant. The respondent and his parents demanded a new Maruti Car from the appellant's parents, when the appellant refused for the demand of respondent due to her father's inability to mobilise the amount. The respondent had snatched all her jewels and he is in possession of 40 sovereigns of gold and house hold articles worth Rs.25,000/- and cash of Rs.50,000/-. The appellant's family members had taken several steps through mediators for the reunion of appellant with the respondent. The appellant is always ready and willing to live with the respondent and has no intention to give consent for divorce.

4. The learned Principal Subordinate Court, Erode after considering the oral evidence, pleading and materials on record, dismissed the petition in H.M.O.P.No.277 of 2008, filed by the husband for divorce on 11.03.2013. Aggrieved over this, the husband has preferred C.M.A.No.43 of 2013 on the file of the learned No.I, Additional District Court, Erode.

5. The learned Additional District Judge No.I, Erode on re appreciation of evidence and materials placed had reversed the findings of trial Court and granted divorce. Challenging, the said order of the appellate Court, the wife has preferred this appeal before this Court.

6. The learned counsel for the appellant has raised the following Substantial Questions of Law were:

(a) Whether the petitioner/ husband had discharged his initial burden of proving that the respondent/wife is affected by "Schizophrenia" as contemplated under Section 13(i)(iii) of the Hindu Marriage Act.

(b) Whether the Lower Appellate Court is right in shifting the burden on the wife to prove the negative, especially when the husband had not discharged his initial burden in accordance with law?

7. The learned counsel for the appellant vehemently argued that the Appellate Court grossly erred in reversing the well considered order of the trial Court. The learned counsel for the appellant contended that the trial Court heard the evidence of PW3, the Doctor and Ex.P.6, the hand book containing the details of treatment given to the appellant. The learned counsel argued that it is not as a respondent or its family members were kept in dark about the treatment given to the respondent, indeed even before the marriage the respondent and his family members took the appellant to their family Doctor and said Doctor after thorough examination of the appellant gave a opinion that she is a normal person fit for marriage. It was only satisfying themselves with the respondent and his family, they went ahead with the marriage. The learned counsel submitted that the awareness of the respondent that the marriage was not consummated, is false and they lead a very happy married life.

8. The important aspect to be noted is that the appellant in the evidence had accepted that she took treatment for her mental stress. However, when a specific question was posed as to the name of the Doctor during of treatment etc., She gave a reply that she does not

remember anything. This court is not convinced with such an evidence. If really the appellant has taken treatment only for mental stress as claimed by her, certainly she would have remembered the name of the Doctor, who gave a treatment. This information is a very basic information and the deposition that she does not remember even the name of the Doctor is totally not convincing. A person, who claims that she is normal person would never have forgotten the name of the Doctor, who treated her. The evasive reply given by the appellant goes only against her.

9. The learned counsel vehemently contended that the appellant was not suffering from "Schizophrenia" as alleged by the respondent and in reality, she was only suffered from mental stress. According to the learned counsel this mental stress was also caused because of the demand made by the respondent's family by asking for a new Maruthi car. The stress suffered by the appellant was easily curable, as such, she has no mental disorder and she is physically and mentally fit to lead a happy married life with the respondent. The learned counsel therefore prayed that the judgment of the appellate Court is to be set aside and the order of the trial Court may be restored.

10. The learned counsel for the respondent submitted that the trial Court has not at all considered the merits of the case and it has rendered a judgment solely on the ground that the appellant attended the Court for a few hearing on her own. The trial court has grossly failed to appreciate the evidence adduced by P.W.3 Doctor, who had treated the appellant. He has recorded in his note book of treatment who consulted him meant for the appellant as patient that the marriage between the parties was not consummated, though this recording was made by the Doctor in the presence of the appellant she has not objected to the same, meaning thereby, that she accepts that marriage between them was not consummated.

11. The lower appellate court was right in observing that refusal for Co-habitation is also a valid ground for granting divorce moreover the appellant was suffering from "Schizophrenia" and the same has been proved by the respondent while producing medical records as well as by examination of the Doctor. Therefore, the judgment of the lower appellate Court should be sustained and the appeal should be dismissed.

12. Heard the learned counsel for the appellant and the respondent and perused the materials available on records.

13. It is the accepted case of the practice that the

marriage between them was solemnized on 22.10.2007 at Easwaramurthy Hall, Perundurai Road, Erode. It is the case of the respondent that the marriage between the parties was not consummated and the appellant had behaved very abnormally. When the respondent intimated the behavior of the appellant to her parents, he was informed that she was possessed with ghost, when she fell down from her two wheeler near a grave. The father of the appellant promised that the ghost could be driven away by taking the appellant to temple. The appellant was repeatedly left at her parental home by the respondent for treatment. The appellant's father said that his daughter was possessed with three ghosts and only one ghost was at present troubling her. He promised that other two ghosts would also be driven away. In this manner, time was just flying away and the respondent was waiting that his wife would return home cured. Since, all the attempts made by the respondent ended in failure and the parents of the appellant were not coming out with the truth, the respondent filed a petition seeking divorce. Before the trial Court, the respondent examined himself P.W.1 beside examination of two other witnesses. The respondent marked 7 documents. On the side of the appellant, the appellant have chosen to examine only herself and marked one document. The trial court considering all the evidence both oral and documentary, dismissed the petition filed by the respondent seeking divorce.

14. On appeal, the lower appellate Court re appreciated the evidence available on records and reverse the finding of the trial Court and granted a decree of divorce.

15. This Court is unable to appreciate the reasons recorded by the trial Court while dismissing the petition filed by the respondent for divorce. One of the main ground, on which the petition was dismissed was that on the directions of the Court, the appellant started to appear before the Court on all hearing on her own. The lower Court, therefore, came to the conclusion that a person who is normal mentality would be able to travel alone and come to attend the Court. This is rather than amusing finding. It cannot be held for sure that the appellant travelled all the way to Court from her house alone. She could have easily been dropped at the door steps of the Court by others who could be friends or relatives or third parties, who may not be known to the respondent. Therefore, this reason cannot be a ground for ascertaining the mental stability of the person.

16. The trial Court has ordered the appellant to

subject herself for examination before a Psychiatrist, as per order in I.A.No.243 of 2009. However, she has failed to under go any such medical examination. This important aspect was not considered by the trial Court. While adjudicating the divorce petition, if at all, the appellant was of normal mentality, she should have immediately accepted the directions of the Court and appeared before the Psychiatrist and got a certificate that she is of normal attitude. Having missed such an important opportunity, it is not open to the appellant to make a bald averments that she is not suffering from any mental disorder and that she was only suffering from mental stress. The appellant has also taken a contention that before P.W.3, Doctor, it was only her husband who has stated that marriage between the parties was not consummated. Even though, it was her husband, who made statement before the Doctor, when the statement is very serious in nature, if really the parties are cohabited, the appellant ought to have intervened and objected to the Doctor's statement that the marriage was consummated. Having kept mum during the crucial time and having allowed the Doctor to record the statement, now it is not open to the appellant to contend that she was only a normal girl fit for marital life. Admittedly the Appellant has not produced any material before this Court that she was taking treatment only for mental stress and the reason for the said stress.

17. The respondent has taken a stand that she was not having mental disorder, but she was on mental stress for the demand of Maruthi Car by the respondent. If really such a demand has been made by the respondent, the appellant should have made a police complaint for dowry harassment. However, no such complaint was made. It is therefore, apparent that the averment that the respondent demanded a car and that alone caused her mental stress, is against truth. When the appellant had taken treatment even prior to marriage here the stand taken by the appellant only due to several of days she had stress is rejected. It is also pertinent to note that the appellant has not filed a petition for Restitution of Conjugal Rights. However, when no such petition was filed on her behalf. She has been contesting the litigation started by the husband for divorce contending that she was a normal girl not suffering from any kind of mental dis order without any evidence to substantiate her averments.

18. In view of all the above, this court is of the opinion that the husband had discharged the initial burden

with regard to the mental illness of his wife. The respondent got married at the age of 26 after 10 months of his marital life, he has filed a petition for divorce. The litigation has entered the 12th year now. The respondent is roughly 38 years old. Undoubtedly, he had passed the prime time of his youth. One of the essential ingredients of marriage is cohabitation. The marriage between the parties has not consummated and the respondent is living a solitary life. One of the basic ingredients of marriage life is cohabitation, bequeathing children and to lead their life happily. The appellant has denied the physical relationship to the respondent during the marital life. The parents of the appellant have arranged for the marriage knowing fully well about the mental illness of their daughter. Even after marriage the father of the appellant maintained that his daughter was of normal behavior and that she was possessed with some ghosts, not one, but three. He promised that ghost could be driven away by doing some rituals would definitely prove that the appellant is not normal. However, the fact remains that the appellant was suffering from "Schizophrenia" which requires constant medical treatment. Though, this Court sympathises with the mental condition of the appellant, justice requires to balance the evidence and pass orders. The respondent has to start his life afresh atleast from now onwards. As observed earlier, he is already 38 years old. When the respondent was denied his life which includes love, affection, care and cohabitation by the appellant as any normal life, this Court has no hesitation to allow the prayer of respondent and denied the case of the appellant. Therefore, this Court also no hesitation to conclude that the judgment of the lower appellate Court is balanced, cogent and convincing requiring no interference by this Court.

19. In the result, the Civil Miscellaneous Second Appeal No.43 of 2013 filed by the appellant stands dismissed and the order passed by the First Additional District Court, Erode, in C.M.A.No.43 of 2013 dated 30.06.2014 stands confirmed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District Court, Erode,
2. The Principal Sub Court, Erode.

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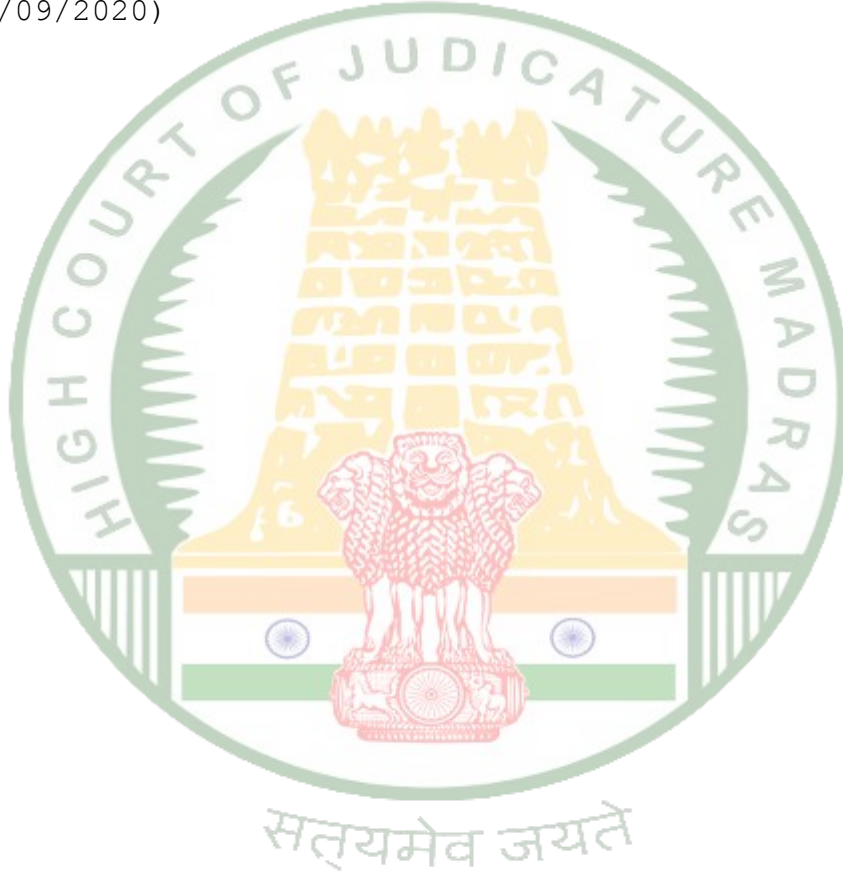
The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.S.Kaithai malai kumaran , Advocate SR.No. 96841

+lcc to Mr.V.P.Sengottuvel , Advocate SR.No. 96678

C.M.S.A.No.27 of 2014

A.SK(30/09/2020)



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