



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.7 of 2015

WEB COPY

Anandakumar

.. Appellant/ Petitioner

Versus

Sivasankari

.. Respondent/ Respondent

Prayer: Civil Miscellaneous Second Appeal has been filed under Section 100 of the Code of Civil Procedure against the fair and decreetal order of the I Additional District and Sessions Judge of Cuddalore, dated 31.01.2014 in C.M.A.No.13 of 2011, reversing the fair and decreetal order passed by the Principal Subordinate Judge, Cuddalore, in H.M.O.P.No.77 of 2009, dated 08.04.2011.

For Petitioner : Mr.R.Gururaj

For Respondent : Mr.K.R.Rameshkumar

JUDGMENT

Heard Mr.R.Gururaj, learned counsel for the appellant/husband, and Mr.K.R.Rameshkumar, learned counsel for the respondent/wife, through Video Conferencing, due to COVID-19 pandemic.

2. Challenging the impugned fair and decreetal order passed by the learned first Appellate Court in C.M.A.No.13 of 2011, dated 31.01.2014, reversing the fair and decreetal order passed by the learned trial Court in H.M.O.P.No.77 of 2009, dated 08.04.2011, granting divorce, the appellant/husband has filed the present appeal raising the following substantial questions of law:-

"(i) Did not the lower appellate Court commit grave error in reversing the judgment of the trial judge even without stating how the judgment of the lower Court is not correct?

(ii) Did not the lower appellate Court cast the burden of proof on the husband when the accusation has been proved?

(iii) Was not the trial judge wrong in not even discussing the oral evidence?

(iv) Did not the lower appellate Court commit grave error in drawing adverse inference against the respondent for non-production of medical records?"



3. Learned counsel appearing for the appellant/husband submitted that after the betrothal held on 01.02.2009, the marriage between the appellant/husband and the respondent/wife was solemnized on 11.06.2009 at Rangroop Mahal Thirumana Mandapam, Cuddalore. It was the case of the husband that on the date of marriage, the respondent/wife said to have revealed to him that she was suffering from mental depression and nervous debility for more than 10 years, for which, she underwent treatment, and that the marriage was a forced one by her family members. It is further alleged that even on the first night, she fell fast asleep forgetting the fact that it was their first night, as a result, there was no cohabitation between them. On the very next day of the marriage, the wife felt uneasy and behaved in an odd manner and when he brought to the notice of the same to her family members, they have stated that she is a very shy type. Thereafter, he took her to her parental home, whereby she was taken to Dr.P.Anandan at Chennai and when this was informed to the husband, he insisted his presence at the time of next investigation of his wife. Subsequently, both the husband and wife were taken to the same doctor, whereby the said doctor revealed that the respondent/wife was suffering from an ailment for the last 10 years, for which, she requires treatment once in two weeks. Therefore, he pleaded, once the doctor opined that the respondent/wife was of unsound mind, it is unsafe for him to live with her, hence, feeling aggrieved by the concealment and mental problem faced by the respondent/wife, he questioned her family members and they have admitted that the respondent/wife was of unsound mind and they did not say anything more. Having affected at the hands of the respondent's family members, he had filed H.M.O.P.No.77 of 2009 before learned Principal Sub-Court, Cuddalore, seeking for annulment of the marriage held on 11.06.2009 between them.

4. Learned counsel for the appellant/husband further argued that even during the betrothal held on 01.02.2009, she appeared only for 10 minutes when the engagement function itself was held for about 4 hours, that shows that the respondent/wife and her family members have committed fraud by concealing the unsound mind of wife. Therefore, when the respondent/wife played fraud, it is a clear case for annulment of marriage.

5. Per contra, learned counsel for the respondent/wife argued that after seeing the respondent/wife, the appellant/husband and his family members were fully aware of the fact that the respondent was staying with her parents and she was very intelligent and calm type. Only after seeing the girl, the appellant/husband expressed his willingness to marry her and thereafter, all the family members visited the respondent house and thereupon, it was mutually agreed to go for marriage and after conducting betrothal on 01.02.2009 in a grand manner spending huge money, the appellant, his mother



and sisters were talking to her through phone frequently. Therefore, the allegation made by the husband that the wife was suffering from mental illness is absolutely a false one.

6. Denying the allegation that the respondent/wife was made to appear only for a brief period, it is submitted that the said allegation invented only for the purpose of creating a ground for divorce. At the time of marriage, the respondent's parents provided 2 sovereigns of gold chain and one sovereign of gold ring to the husband and this apart, he was given a two-wheeler, silver vessels, grinder, mixie, wooden cot, etc. as Sridhanam to the appellant/husband. However, on the advise of his family members, the appellant/husband gave a false complaint stating that the respondent/wife was of unsound mind, which is contrary to the advise of Dr. Ananad to start meditation for some months as the disease is only a curable one. During the second round of treatment, the appellant/husband visited the doctor along with his wife/respondent and therefore, he was aware of the advise given by the said to doctor to go for mediation, hence, the allegation of the husband that the the respondent/wife was of unsound mind for more than 10 years is not correct.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. It is an admitted fact that during betrothal held on 01.02.2009 for about 4 hours, the respondent/wife appeared only for a brief period of 10 minutes. No explanation was given by the respondent's family members except stating that she was a shy type. Secondly, on the next date of marriage, when the appellant took his wife to her parental home, it was admitted by both parties that they met Dr. Anandan, who said to have given prescription for taking medicine for about 10 days, whereas, the respondent, having admitted in her cross-examination that after meeting Dr. Anandan at Chennai, she was advised to take medicine for 10 days for her body pain, has neither taken steps to produce the said doctor for examination, nor produced a copy of the prescription given by the said doctor.

9. The stand of the husband was that after the marriage held on 11.06.2009, there was no cohabitation between them for about a week and during their stay, she behaved in an odd manner and was very dull and that she fell fast asleep even during the first night. Therefore, he took her to Dr. Anandan, who has told him that she has been suffering from mental depression and nervous debility for the past 10 years and hence, it is unsafe to live with her. This apart, within 8 days of marriage, he has also made a police complaint before the Panruti Police Station on 19.06.2009 alleging that she contracted the marriage with him concealing her mental depression and nervous debility, which she has been facing for the past 10 years. But, denying such averment, the



respondent/wife has not produced any oral and documentary evidence and on the contrary, during the cross-examination, she admitted that Dr.Anandan has given tablet for 10 days for mental stress. But, the respondent/wife neither produced the prescription given by the said doctor nor produced medical receipt nor made an attempt to produce the said doctor for examination so as to verify the veracity of treatment taken by her. Such an conduct of the respondent/wife goes to show that she has intentionally suppressed her mental illness.

10. In this context, it is relevant to refer to a decision of the Hon'ble Apex Court in the case of Vinita Saxena Vs Pankaj Pandit [(2006) 3 SCC 778]. In the said case, the husband was found to be suffering from Schizophrenia. Based on the evidence available in that case, the Supreme Court held that when it is proved by evidence that the respondent is suffering from mental disorder, further ground for grant of divorce on the plea of mental sanity or mental disorder is different than cruelty. Therefore, it is a case of cruelty not based on acts and commission of sensible person but those arising from mental disorder. The Supreme Court eventually affirmed the decree in favour of wife.

11. It is thus well settled that when the respondent is found to be suffering from mental depression and nervous debility for the past 10 years, it may amount to cruelty to the spouse applying for divorce and at the same time when such serious disease was not informed to the appellant/husband and it was concealed from him at the time of obtaining his consent for marriage, it furnishes a cause of action for declaring the marriage a nullity under Section 12 (1)(c) of the Hindu Marriage Act, 1955, which states that any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on the ground that the consent of the petitioner 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.

12. In the case on hand, there being abundance of evidence on the basis of which the trial Court itself has found that the wife is suffering from mental depression and nervous debility and the said illness was not informed to the husband at the time of obtaining his consent for marriage, it is a fit case for declaring the marriage a nullity under Section 12 (1)(c) of the Act. As stated above, when the appellant/husband alleged that the respondent has concealed the fact that she was suffering from mental depression and nervous debility as opined by Dr.Anandan, Chennai, onus lies on the respondent/wife to prove that she was not suffering from any of the disease as alleged by her husband. But, peculiarly, she has not produced any oral and documentary evidence to disprove the said stand taken by the husband.

13. Above all, the parties have been living separately for more than a decade as she was separated from the



matrimonial home on 19.06.2009, that is, within 8 days of marriage. A Full Bench of the Apex Court in the case Naveen Kohli Vs. Neelu Kohli [(2006) 4 SCC 558] has ruled that where there has been a long period of continuous separation, the marriage becomes a fiction, therefore, any refusal to sever the empty marriage tie, the law in such cases, does not serve the sanctity of marriage and on the contrary, it shows scant regard for the feelings and emotions of the parties and in such like situations, it may lead to mental cruelty.

14. In yet another decision, following the above said decision, the Hon'ble Apex Court in Samar Ghosh Vs. Jaya Ghosh [(2007) 4 SCC 511] held as follows:-

"101..... (xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

As highlighted above, in the case on hand, the parties have been living separately for more than a decade and therefore, it is abundantly clear that the marriage has broken down beyond repair. Thus, in my considered view, the entire approach adopted by the learned first appellate Court in reversing the fair and decretal order passed by the learned trial Court is erroneous.

15. In fine, for the reasons stated above, the Civil Miscellaneous Second Appeal stands allowed by answering the substantial questions of law against the respondent/wife. Consequently, the judgment and decree passed by the learned first appellate Court is set aside and the judgment and decree passed by the learned trial Court is restored. No Costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar



To

1.The I Additional District and Sessions Judge,
Cuddalore.

2.The Principal Subordinate Judge,
Cuddalore.

Copy to:

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

+1cc to Mr.K.R.Rameshkumar , Advocate SR.No. 36169

+1cc to Mr.D.Baskar, Advocate SR.No. 36129

C.M.S.A.No.7 of 2015

CNR(CO)

A.SK(01.09.2021)