

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2020

PRONOUNCED ON : 03.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.570 of 2020
and CMP.Nos.3465 of 2020

(Through Video Conferencing)

Gayathri

... Appellant/Respondent

vs.

Jawahar

... Respondent/Respondent

This Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, to set aside the order dated 07.11.2019 passed by the Family Court, Nagapattinam in H.M.O.P.No.189 of 2019.

For Appellant : Mr.S.Sadasivan

For Respondent : Mr.A.Selvendran for
L.S.M.Hasan Fizal

J U D G M E N T

C.SARAVANAN, J.

The appellant (wife) is aggrieved by the impugned Judgment and Decree dated 07.11.2019 passed by the Family Court, Nagapattinam in H.M.O.P.No.189 of 2019.

2. By the impugned Judgment and Decree dated 07.11.2019, the Family Court, Nagapattinam has dissolved the marriage solemnised between the appellant and the respondent on 11.03.2001.

3. The said case was originally filed before the Subordinate Court, Nagapattinam in H.M.O.P.No.15 of 2011 on 29.06.2009 and 09.07.2009. Later it was transferred to the Family Court, Nagapattinam and re-numbered as H.M.O.P.No.189 of 2019.

4. The impugned Judgment and Decree of the Family Court, Nagapattinam in H.M.O.P.No.189 of 2019 is sought to be assailed by the appellant on the ground that the Family Court ought to have given a proper findings on the testimony of P.W.2 Doctor who deposed evidence on behalf of the respondent (husband) to the effect that the appellant was a normal person and not of unsound mind and that she had expressed her desire to live with the respondent and a long with their son which was ignored by the Family Court.

5. H.M.O.P.No.189 of 2019 was filed by the respondent (husband) under Section 13 (1) (i-a) and 13(1) (iii) of the Hindu Marriage Act, 1955 for dissolution of the marriage solemnised between the appellant and the respondent on 11.03.2001 on the ground of the appellant was suffering of unsoundness of mind that made it difficult for the respondent to live with the appellant.

6. In the H.M.O.P., the respondent stated that the parents of the appellant had arranged for the marriage by suppressing the fact that the appellant was already suffering from mental illness hoping that the marriage would normalise her.

7. According to the respondent soon after the marriage, he had set up a matrimonial home in a rented house in Uthangari when he was working in Sambalpatti, Uthangarai of Karur Vysya Bank. According to him, on the very first day of their stay in Uthangarai, he found the appellant crying profusely and inconsolably without any reason when the respondent returned home after work. He alleged that the appellant used to hit herself on her head. He further alleged that the appellant was incapable of taking care of herself and their child born to them on 16.06.2002 and was therefore, entitled for a dissolution of the marriage under section 13(1)(iii) and 13 (1) (ia) of Hindu Marriage Act, 1955.

8. The respondent further alleged that he was informed by the appellant's parents that the appellant by nature was a timid and frightened person and will be fine if a divine chord (Kbf;fapW) was tied around her wrist after a visit to a local temple. However, despite tying a divine chord (Kbf;fapW), the appellant continued to cry and remained sad and would at times shout and abused him and thereby robbing of his peace.

9. According to the respondent, the appellant was suffering from incurable mental illness and was unable to take care herself and thus tortured him. It was further stated that the appellant was initially given treatment by Dr.Ruthiran, at Chennai before marriage which fact was suppressed from him.

10. The respondent further stated that despite being given treatment by Dr.Ramakrishnan, Neuro Centre, Trichy during 2002-2003 when he came to know about the mental illness of the appellant and that the appellant required lifelong treatment, and subsequently PW2 Dr. Rajaram who assisted to Dr.Ramakrishnan there was no improvement in the appellant's mental health.

11. According to the respondent, initially, the mother of the appellant lived with the appellant and the respondent at Uthangarai to take care of the appellant and child. The respondent further alleged that when he was transferred from Uthangarai to Trichy, the appellant's mother also came to live with them for some time. He stated that the appellant's mother later informed the respondent that she could not take care of the appellant and the child at their matrimonial home in Trichy and therefore took the child with her to Thirutharipoondi for being taken care. The appellant's parents later took the appellant with them to Thirutharipoondi.

12. The respondent further stated that the appellant had once consumed the medicines prescribed for one day in a single dose and had to be hospitalised in serious conditions.

13. The respondent further stated that after he was transferred from Trichy to Nagapatinam, the appellant and the respondent lived together for some time in a rented premises in Nagapattinam. However, the appellant's mental health further deteriorated and therefore it became clear that she was incapable of taking care of herself. It was further submitted that the appellant also threatened to commit suicide. He further alleged that the appellant showed no affection to him and abused him and always kept in tender hooks.

14. The respondent further stated that the appellant had threatened to run away from home when they were living in Trichy and later once again in Nagapatinam and was restrained with tact by the appellant. Since the appellant was suffering from mental illness, it became difficult for the respondent to lead a peaceful matrimonial life with the appellant and therefore prayed for dissolution of the marriage solemnized between them on the ground of cruelty also.

15. The appellant in her counter affidavit before the Family Court denied the allegations of the respondent. The allegation that the appellant was taken to temple and tied with a divine chord (Kbf;fapW) was untrue and stemmed from a superstitious belief and upbringing of the respondent.

16. The appellant further submitted that the entire marriage expenses were borne by the appellant's father during the marriage. That apart, the appellant's father had given marriage gifts worth Rs.3,00,000/- apart from 75 sovereigns gold jewellery at that time of marriage due compulsion to the Family of the Respondent. The appellant further submitted that the respondent also demanded dowry at the instigation of his parents.

17. The appellant further stated that initially for about three months after the marriage, the appellant and the respondent stayed with the parents of the respondent, where, she was forced to follow the rituals of Kalki Bhagwan against her wishes.

18. The appellant submitted that the song and the dance conducted in the respondent's parents home along with his family members as per the ritual of Kalki Bhagwan were loud and the devotees who visited the house of the respondent danced with the frenzy and since the appellant refused to participate in the ritual, she was assaulted by the appellant and his family. The appellant further submitted that these rituals would go on for long hours, as a result of which, she was also deprived of her sleep. Since the appellant resisted, she was abused and physically assaulted by the respondent and his family members. She thus thereafter suffered mental stress which lead to her illness.

19. It was submitted that the rituals followed by the family of the respondent adhering to the Kalki Bhagwan and forcing her to follow the same were against her wishes. It is submitted that it led to anguish and gave sleepless nights to the appellant and impacted appellant's mental and physical well-being and was therefore given treatment.

20. The appellant squarely blamed the respondent for the mental stress and anxiety to follow the Kalki Bhagwan ritual by the respondent which lead to depression and therefore took treatment from Dr.Ramakrishnan of Neuro Centre during 2002 to 2012 after her marriage for the first time.

21. The appellant stated that she suffered from anxiety and depression because of harassmt of the respondent and his parents as they forced her to worship Kalki Bhagwan against her wishes and the scar of such experience lead to depression and anxiety.

22. The appellant further submitted that even after they moved into an independent house in Uthangarai, the appellant was illtreated by the respondent at the instance of the respondent's parents. According to, the appellant, she however tolerated the harassment meted by the respondent and continued to live hoping things will change and under these circumstances the marriage was consummated and thereafter a son was born to them on 16.06.2002.

23. The appellant has further stated that the respondent had treated her with cruelty for dowry. The appellant further stated that it is only on account of the harassment meted by the respondent and his parents, the appellant and the child born to them, she was driven out from the matrimonial home and the respondent filed a false petition on the ground of cruelty and unsoundness of mind.

24. The appellant further stated that the appellant and the respondent were living together for almost eight years after the marriage. However, the appellant and child were unceremoniously left by the respondent in the house of the appellant's parent at the instigation of his parents.

25. The appellant further stated that she did not file any complaint against the respondent for abandoning her and their child hoping that the respondent would eventually take the appellant and their child back with him. Instead, the respondent filed a false case under Section 13 (1) (iii) and 13 (1) (i-a) of the Hindu Marriage Act, 1955 for dissolving the marriage on the ground of cruelty and unsoundness of mind of the appellant.

26. The appellant however admitted that Dr. Ramakrishnan assisted by PW2 Dr. Rajaram of Neuro Centre, Trichy in 2002 gave treatment and continued to consult PW2 for treatment. The appellant stated that was normal and had recover from depression.

27. The appellant also stated that though she suffered from depression and anxiety, she had fully recovered. However the Family Court has ignored the same. The appellant further, submitted that these illness were temporary in nature and similar to sugar problem (like diabetes), cold, blood pressure etc. and anybody could get then at any stage of their life and could suffer from them and were curable like any other ordinary illness. This also was the statement of PW2 in his oral testimony. The appellant further submitted that such temporary setback in life due to depression and anxiety did not impact the quality of the marital life of the appellant and the respondent.

28. Before the Family Court, following Exhibits were marked by the appellant and the respondent in support of their respective case :-

Exhibits marked on the side of the appellant (wife)	Exhibits marked on the side of the respondent (husband)
Ex.R1 - Photograph - 12	Ex.P1 - Photograph -1
Ex.R2 - Photograph - 04	Ex.P2 - Treatment book of appellant (Original)
Ex.R3 - Photograph - 05	Ex.P3 - Family Card (Original)
Ex.R4 - Photograph - 04	Ex.P4 - 31.03.2008 Transfer order (Xerox)
Ex.R5 - Photograph - 01	Ex.P5 - 03.04.2004 Transfer order (Original)
-	Ex.P6 - Treatment file of respondent (Xerox)

29. After considering the deposition, the Family Court had framed the following two issues to be considered:-

i. Whether the petitioner (respondent herein) is entitled for divorce on the ground that unsound mind of the respondent (appellant herein)?

ii. Whether the petitioner (respondent) is entitled for divorce on the ground of cruelty?

30. The Family Court has answered the above questions in favour of the respondent and had given divorce to the respondent by dissolving the marriage solemnized on 11.03.2001 vide impugned Judgment and Decree. Aggrieved by the same, the appellant has filed this appeal for setting aside the impugned Judgment and Decree.

31. Before the Family Court, the respondent examined himself as P.W.1. Dr. Rajaraman who had treated the appellant was examined as P.W.2. Records indicate that P.W.2 was summoned to give evidence on behalf of the respondent by the Court. Through P.W.2, certain medical records of the appellant were marked both before separation and after separation. The appellant examined herself as R.W.1.

32. We have heard the learned counsel for the appellant and the respondent. We have considered the arguments advanced on behalf of the appellant and respondent. We have also perused the evidence that was produced by the respondent and the appellant before the Family Court.

33. The appellant and the respondents were married on 11.3.2001 as per Hindu rituals. The marriage between the appellant and the respondent was also consummated and within 15 months of the marriage, a son was also born to them on 16.6.2002. It indicates that the appellant may have suffered from postpartum depression and was given shock treatment at the Neuro Centre, Trichy by the Chief Medical Officer Dr. Ramakrishnan and his junior Dr. Rajaram PW2 in 2003.

34. P.W.2 had assisted Dr. Ramakrishnan of Neuro Centre, Trichy when the appellant initially came for treatment in connection with mental stress/depression/anxiety between 14.02.2002 and 19.02.2002. As per P.W.2, even after the appellant had separated in 2008, the appellant continued to consult at Neuro Centre, Trichy and that the appellant had completely recovered from illness.

35. Though the Family court has noted that the appellant herself confirmed that she took treatment from PW2 as was evident from Ex.P2 (Treatment Book of the appellant) and Ex.P.6 (Treatment file of the Appellant) which were marked through PW2, yet the Family Court has disregarded the evidence of PW2. Ex.P.2 and P6 merely established that the appellant took treatment from PW2 for depression and anxiety. However, they did not establish that the appellant was either suffering from an unsoundness of mind incurably or was continuously or intermittently suffering from such a mental disorder to such an extent that it could not be reasonably expected for the respondent to live with the appellant when indeed they have lived together for almost eight years.

36. The Family Court, Nagapatinam has allowed H.M.O.P.No.189 of 2019 merely based on the averments of the respondent and the oral deposition of the respondent (PW1) and from a selective reading of the deposition of PW2 in his chief examination ignoring the answer given by PW2 during cross examination.

37. Exs.R.2 to R.5 photographs also shows that the appellant and the respondent have captured several happy moments together when they lived together. Ex.R1 series indicates that the family of the respondent was a follower of Kalki Bhagavan and even during the wedding ceremony of the Appellant and the Respondent, portrait of Kalki Bhagavan's with his wife was

worshipped by his family. Whether the appellant was forced to worship Kalki Bhagavan and whether it lead to depression cannot be straight away inferred from the evidence. However, it is to be noted that depression of the appellant coincided with her pregnancy. When she visited PW2 for treatment in 2002, she was about six month pregnant. Neither the Court nor the medical record have attributed either the pregnancy or the alleged pressure to worship Kalki Bhagavan led to depression of the appellant. However, the facts indicate that the appellant suffered from depression and was taking treatment from Neuro Centre when P.W.2 worked and had recovered from depression.

38. P.W.2 deposed that during the initial consultation in 2002-2003 the appellant had stated "I am torturing everyone; useless, kill me" and had stated "why should I live" as is borne out in Ex.P2 medical records of the appellant maintained by the Neuro Centre, Trichy to conclude that the appellant may have had suicidal tendency in 2002 and therefore she was counselled and that she often thought she was giving problems to her parents. Though these statements to indicate that the appellant may have had suicidal tendencies between 2002 and 2003 when she first visited the said hospital, there are however no evidence to suggest that such tendencies persisted thereafter.

39. Though the evidence of PW2 suggest that the appellant had stated that she used to cry in the evening and that she used to hear her mother cursing her as an unlucky persons (jhpj;jpuk;) and that she heard her father blaming her and commanded her to not to eat food again these are statements which was made by the appellant when she was newly married and was six month pregnant in 2002 as is evident from a reading of medical records - Ex.P.6.

40. These statements of PW2 indicate that the appellant may have suffered from anxiety and depression in 2002. PW2 has also deposed that the mental illness is not a chronic illness and was similar to the cold, diabetics, Blood pressure and etc and is curable.

41. The Family Court ignored the deposition of P.W.2. PW2 deposed that the appellant came for treatment by herself on several occasion to their hospital and was earlier treated by his senior Dr.Ramakrishnan in 2002 and later by him when the appellant visited the hospital herself for treatment and continued to take treatment even after the appellant and the respondent had separated.

42. P.W.2 has also deposed that the appellant suffered initially from the symptoms of mental stress due to the anxiety

and worries and was prescribed medicines to be taken regularly and was prescribed sleeping pills in 2002 and that the appellant had completely recovered. P.W.2 further deposed that mental stress can lead to mental illness if proper and timely medical care is not given to a person.

43. The deposition of P.W.2 also indicates that the appellant was not required to take lifelong meditation and was normal though in 2002 and she did show signs of mental illness and suicidal tendencies in 2002. PW2 has also deposed that between 08.10.2003 and 16.10.2003, the appellant was admitted in their hospital as an inpatient and was given shock treatment and thereafter admitted once again 18.10.2003 treatment.

44. Though P.W.2 in his deposition stated that persons suffering from the mental illness can recover with medicine but sometimes recovery was faster when they are secluded and given shock treatment, he has not stated that the appellant was suffering from incurable mental illness. The appellant denied that she was administered shock treatment at the Neuro Center by P.W.2 and/or his senior.

45. It is noted that the mental illness with which the appellant was suffered were at the beginning of the matrimonial life of the appellant and the respondent. Thereafter, they have lived together upto 12.04.2009 in Nagapatinam as per the petitioner though according to the appellant, they separated when they were staying in Trichy when the respondent unceremoniously dropped the appellant and their child at the appellant's parents house.

46. As per Ex.P4, dated 31.05.2008 the Transfer Order, the appellant was required to join on or before 10.04.2008 at Nagapatinam. The respondent filed H.M.O.P.No.15 of 2011 on 29.06.2009 and thereafter represented on 09.07.2009 before the Subordinate Court, Nagapatinam. The appellant denied she lived with the respondent in Nagapattinam. According to her, she was dropped by the respondent in 2008 at her parents house where they living in Trichy. The actual date and circumstance which lead to separation are not clearly coming on either in the evidence or the impugned Judgment and decree.

47. The appellant has also denied that she has ever consumed medicines prescribed beyond the dosage and was hospitalised in a serious medical condition. There are no evidence in the form of medical records to show that the appellant was admitted under a serious medical condition because she had allegedly attempted to commit suicide by consuming medicine. Evidence of P.W.2 merely indicates that the appellant may have had such tendencies in 2002 when she first visited the hospital.

48. P.W.2 has further stated that the appellant visited the hospital for treatment earlier with her father and once with the respondent and thereafter most of the time alone by herself though Ex.P.6 indicates that the appellant used to visit Neuro Centre and took treatment till 27.02.2012.

49. P.W.2 in his chief examination has further stated that on 17.09.2010, when the appellant visited for treatment, she was normal and was advised to take only medicine. Ex.P.6 further indicates that on 17.09.2010 she was treated by Dr.Priya Natraj. PW2 has further stated that merely because the appellant was asked to take medicine by itself did not mean that the appellant was suffering from any kind of mental illness.

50. During cross-examination of PW2 has also deposed that even if the appellant discontinued from medication, it would not necessarily mean that there would be a relapse of her illness. He has also stated that he had not prescribed any sleeping pills to the appellant but has merely deposed that the appellant would have complications if she consumed the medicines above the prescribed quantity.

51. The appellant who tendered evidence as RW1 was subject to a lengthy cross-examination by the counsel for the respondent before the Family Court. The answers given by the appellant to question posed to her to discredit her and the creditability of her statements in her proof affidavit indicates that even the counsel for the respondent treated the appellant as a normal person and not a person suffering from any kind of mental illness or dis-order.

52. Indeed, the answers given by the appellant to several uncomfortable and inconvenient questions posed during cross examination, clearly shows that the appellant was not a person suffering from any mental illness. If she was mentally unsound she would not have with stood the cross examination.

53. If the appellant was indeed suffering from any kind of mental illness, she could not have possibly answered to any of the uncomfortable and inconvenient question posed to her during cross-examination by the learned counsel for the respondent. English translation of the answers of the appellant given by her during cross-examination are extracted below. :-

I finished 12th Standard in 1996 and have not studied since. I joined BBA at Mannargudi College. I went to college only for a month. I stopped studying after that. I stopped the study as the marriage with the petitioner (respondent) was

fixed. The marriage was celebrated in 2001. I got married in 2001. I dropped out of studies in 2002. After finishing 12th Standard, I was at home for 2 to 3 years. It is incorrect to state that I was suffering mental problem and therefore, did not continue my studies. It is true that I took treatment from a Psychiatrist in Trichy. The said hospital was for treating patients with psychiatric and mental problems. I took treatment only after my marriage. It also gave treatment to patients with other ailments. I went to that hospital only after 2002 for treatment. Because of the cruelty of the respondent in forcing me to worship Kalki Bhagavan against my wishes, I suffered from mental depression. I was therefore taken to a hospital. After the marriage in 2001, I was forced to continue to worship Kalki Bhagavan. I however refused to worship Kalki Bhagavan. Since I was continuously pressurized to worship Kalki Bhagavan for over a period of one year by the petitioner (husband), my physical, well being was impacted adversely. I was treated by Dr.Ramakrishnan in Trichy. Dr.Rajaram (PW2) was Dr.Ramakrishnan's Assistant. He (PW2) also treated me. My father informed me about the deposition of Dr.Rajaram. I am not aware of the details of evidence given by Dr.Rajaram (PW2) before this Court (Family Court). I know that it was stated that I had stopped treatment in 2012. I used go to him for medical advice once in three months and sometimes once in six months. After 2012, I did not go to him for treatment for depression. I have not been treated by any other doctors, other than these two Doctors. I have not taken treatment from anybody else. I have not taken treatment from Dr.Rajagopal of Thanjavur. It is also incorrect to say that I took treatment before the marriage from that doctor. It was also incorrect to say that I took treatment from the Dr.Rudran of Chennai. I have only consulted Dr.Ramakrishnan and Dr.Rajaram (PW2) for my mental condition. The doctors examined me. After examining

me, the doctors did not inform me that I was suffering from any mental illness and informed that I had depression and they would cure it. No sleeping pills were prescribed to me. It is correct that the doctors advised me to take the medicine until I was cured. It is incorrect to state that I was treated as an inpatient in the same hospital from 08.10.2003 to 16.10.2003. I was informed by my father that I was given electric shock once for treatment. The doctor did not tell me that if I stopped taking pills, I would not be cured. The doctor only told me to continue to take the pills and to stop it when I recover. It is incorrect to states that 14.02.2002 to 19.02.2002 I took treatment as an impatient in same hospital. My husband has filed a case for divorce from me claiming that I am insane. No objection was written to the petition filed by the petitioner (husband). I told my counsel that I was not a crazy. I was shown my chief examination. What I have stated in my counter has been reiterated in my proof affidavit. During the marriage, the petitioner (husband) was working in Uthangarai. He (husband) worked in Karur Vysya Bank. In Uthangarai, we stayed in a rented house. The owner lived on the ground floor while we lived on the first floor. Another person lived on the second floor. The details of worship of Kalki Bhagavan forced by the petitioner (husband) were not known to the above neighbours because the incident took place only in Mannarkudi before moving to Uthangarai. After we came and settled in Uthangarai that incident did not take place. In Mannarkudi, we stayed for three months in my mother-in-law's house. Kalki Bhagavan's photo was kept and worshipped in the house of mother-in-law. I saw photo of kalki Bhavan. I saw once him directly in person at Varathapalayam, Mannargudi. The petitioner (husband) took me to a big temple in Mannargudi on several occasions. For honeymoon, we went to Kodaikanal along with mother and father. In Kodaikanal, we stayed for four day. There, we saw few

temples and came back after a week. When we were at Uthangarai, my mother and father would occasionally come and go. Delivery was at Indira Hospital, Thiruthuraipoondi. In Trichy, my son studied for a year in a children's school. After that, he studied in Thiruthuraipoondi. My father is educating my son in Thiruthuraipoondi. My husband was transferred from Uthangarai to Trichy. In Trichy, he worked for three years. In Trichy, we lived in a Ward No.9 in Karumandapam. From Trichy, he did not go to any other place. While in Trichy, he left me at my parent's house. After that, I have no idea about his transfer. I am not aware that he was transferred to Nagapattinam. I am aware that presently he is working in Chennai. I am not aware of the duration of his posting in Nagapattinam. . It is incorrect to state that we lived in a house of one Alagappachettiyar in NeelamelaVeethi, in Nagapattinam. It is incorrect to state that there was problem between me and petitioner (husband) in Nagapattinam. It is incorrect to states that when we were living in Nagapattinam, my mental illness worsened/increased and became uncontrollable and therefore, my parents took me away. It is incorrect to say that I know the details of Neela Meela Veethi Road in Nagapattinam and I am telling lies. It is incorrect to say that because of my mental illness in Nagapattinam, the petitioner (husband) filed this petition. It is incorrect to state that in my counter, I have stated that the marriage gifts were not given at the time of marriage. It is incorrect to say that the jewelry and marriage gift was given during the marriage, are in my parent's house. They are with the mother of the petitioner (husband). We enrolled my son in a children's school in Trichy and I do not remember the name of the School. However, I recollect that it was a Christian School. It is incorrect to say that there are no children's schools in Trichy. It is correct to say that the petitioner

(husband) has a younger brother who was married was living with his parents. It is incorrect to state that I consumed all the pills for a day in a single dose and became critically ill while living in Uthangarai. It is incorrect to state that at that time, my parents were with me and they informed to the petitioner (husband) through telephone. When we were staying together, none of the petitioner's (husband's) colleagues visited our house. I do not know about the details of the Family Ration Card obtained by the petitioner (husband) in Nagapatinam. It is incorrect to state that the petitioner's (husband's) mother handed over my jewelery items to my mother because I was mentally ill. I do not know details of debts of the petitioner (husband) and his mother. I did not file any petition separately for the restitution of conjugal rights. At the same time of my marriage, my parents were reasonably well off. I deny the suggestion that my parents did not spend Rs.3 lakhs or had given 25 sovereign jewelery as marriage gifts. Suggestion that I am mentally ill and therefore, do not know what I am doing is denied. The suggestion that the petitioner handed over marriage gift items to my mother is denied. It is incorrect to say that I am not able to take care of my child because I was suffering from mental illness. I am taking care of my child. It is correct to state that my son was studying L.K.G, UKG in Trichy when we lived in Trichy. I do not have the details of treatment taken in Trichy and the same is with the hospital in Trichy. Presently I do not have Ex.P.2. It is incorrect to say as if I am still undergoing treatment. After the honeymoon, we returned to Mannargudi. It is not correct to say that I am still undergoing treatment for mental illness. I filed a petition in Thiruthuraipoondi Court for maintenance. The petitioner is giving me Rs.10,000/- as maintenance allowance. It is not correct to state that I do not wish to live with the petitioner (husband). It is not correct to state that since I did

not wish to live with petitioner (husband), I filed a petition for maintenance.

54. The evidence given by the appellant during her cross examined which has been extracted above clearly shows that the appellant was not a person of unsound mind within the meaning of Section 13(1) (iii) of the Hindu Marriage Act, 1955 so as to warrant dissolution of the marriage solemnized between the appellant and the respondent.

55. The answers elicited during cross examination from the appellant show that she was not suffering any kind of mental illness. In our view, the learned presiding officer of the Family Court ought to have appreciated the above evidence properly and particularly the evidence of P.W.2 during cross-examination.

56. The Family Court has over looked the evidence of PW2 who categorically stated that the appellant had last visited him even as late as 27.02.2012 and was also normal.

57. The Family Court also failed to note that PW2 also categorically stated that the depression did not require lifelong treatment and was quite similar to ordinary illness and patients recover and lead normal. The above deposition of PW2 that the appellant was normal has been ignored on an erroneous reasoning that it cannot be considered worthy of any evidentiary value in absence of contemporaneous documentary evidence even though PW2 was a witness invited by the respondent.

58. The Family Court further failed to note that PW2 was summoned at the behest of the respondent to depose evidence. He has not only deposed evidence as a person who treated the appellant but also as an expert. Therefore, the impugned judgment of Family Court is liable to be set aside. The evidence of PW2 has completely debunked the case propounded by the respondent in the petition before the Family Court.

59. It is further bewildering as to how the learned presiding officer of the Family Court could come to a strange conclusion that the appellant was suffering from mental illness to dissolve the marriage even though the appellant was subjected to rigorous cross examination. In our view, the impugned Judgment and decree of Family Court has resulted in miscarriage of justice as it has erred in dissolving the marriage between them without properly considering the deposition of the appellant and P.W.2 in a correct perspective.

60. In our view, the Family Court erred in jettisoning that a part of the evidence of PW2 which were against the case of respondent when he had assiduously built before the Family Court. The learned presiding officer of the Family Court has completely misread the evidence before him. The Family Court ought to have dismissed the petition filed by the respondent based on the evidence produced by the respondent himself.

61. There is evidence of cruelty by the appellant on the respondent. Further, the appellant and the respondent have lived together for a period of 8 years after the marriage was solemnised on 11.03.2001 and a son named Manoj Prakash was born to them after the bedlock on 16.06.2002. Merely because the appellant was prone to sadness and melancholy and may have sometimes cried is not sufficient to infer cruelty by her. It cannot be said that the appellant was either of unsound mind and she could not take care herself or was cruel.

62. Thus, the Family Court has given erroneous decision merely based on the deposition of the respondent that the appellant was of unsound of mind or was cruel.

63. As the Family Court committed errors in dissolving marriage and granting divorce to the appellant and the respondent vide impugned Judgment and Decree, we are of the view that the impugned Judgment and decree passed by the Family Court is liable set aside and H.M.O.P. filed by the respondent is liable dismissed.

64. Accordingly, this Civil Miscellaneous Appeal is allowed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

kkd

To

1.The Judge
Family Court,
Vellore.

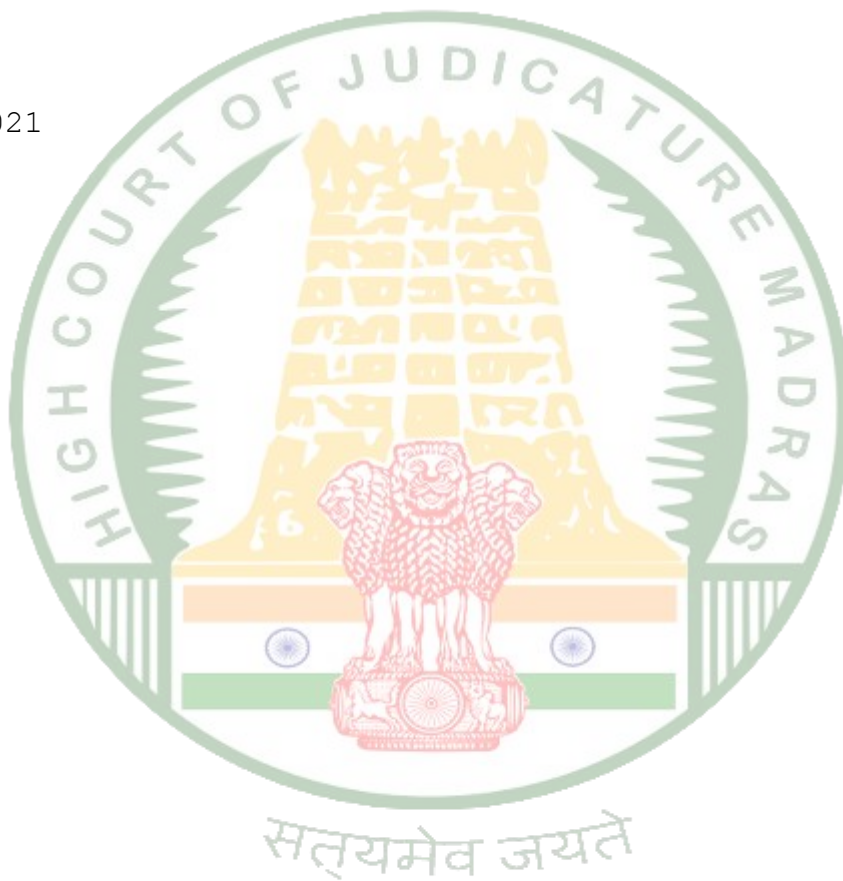
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2.The Section Officer
VR Section
High Court,
Madras-104

+2 ccs to Mr.S.Sadasivan Advocate sr35401
+1 cc to Mr.L.S.M. Hasan Fizal Advocate sr35521

C.M.A.No.570 of 2020

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