



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.07.2021
Pronounced On	12.07.2021

CORAM
THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.676 of 2012
and
M.P.Nos.1 of 2012 & 1 of 2013

(Through Video Conferencing)

P.Manimozhi ... Appellant/Appellant/Defendant

vs.

1.A.Rajendran

2.A.R.Rajakumari

.. Respondents/Respondents/Plaintiffs

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree of the District Court II, Kancheepuram in A.S.No.41 of 2010 dated 11.08.2011 in confirming the Judgment and Decree of the Subordinate Judge, Kancheepuram in O.S.No.26 of 2006 dated 26.04.2010.

For Appellant : Mr.Surya Narayanan
For Respondents: M/s.Aswini Devi
for M/s.P.Veena

J U D G M E N T

This appeal has been field by the defendant who remained unsuccessful before the Trial Court and partly successful before the First Appellate Court.

2. The appellant has filed this appeal against the Judgment and decree dated 11.08.2011 in A.S.No.41 of 2010 passed by the District Court-II, Kancheepuram insofar as the Appellate Court has upheld the Judgment and decree of the Trial Court in O.S.No.26 of 2006 decreeing the suit for a sum of Rs.2,00,000/- + Interest + Cost.

3. A "Notice of Admission" was ordered on 30.07.2012 when this appeal was listed for admission as was the practice of this Court in vogue in 2012. This appeal has not been admitted.

4. By an interim order dated 30.07.2012, the appellant was also directed to deposit a sum of Rs.1,00,000/- within a period of one week in terms of conditional order dated 21.06.2012. It has been apparently complied by the appellant and the said



amount is said to be lying in the credit of this Appeal.

5. Both the appellant and the respondents are represented by their counsel.

6. The appellant and 1st respondent's daughter viz. the 2nd respondent got married on 15.07.2002. Due to incompatibility, the 2nd respondent filed H.M.O.P.No.12 of 2004 for dissolution/annulment of marriage under Sections 12 and 14 of Hindu Marriage Act, 1955.

7. H.M.O.P.No.12 of 2004 was later decreed on 17.02.2005 vide Ex.A11. Thereafter, the present suit was filed in O.S.No.26 of 2006 before the Sub Court, Kanchipuram to recover a sum of Rs.2,43,000/- being marriage expenses allegedly incurred by the 1st respondent.

8. The Trial Court decreed O.S.No.26 of 2006 filed by the respondents by holding that the 1st respondent had indeed spent a sum of Rs.2,43,000/- as marriage expenses for the marriage between the appellant and the 2nd respondent. The Trial Court decreed the above suit based on the admission of the appellant during trial.

9. On further appeal by the appellant, the First Appellate Court partially granted the relief to the appellant/defendant, by restricting the decree amount to Rs.2,00,000/-.

10. As against the Judgment and decree of the First Appellate Court, the present appeal has been filed.

11. The learned counsel for the appellant/ submits that the 2nd respondent has also got married during the pendency of this appeal and therefore, the 1st respondent is not entitled to the decretal amount.

12. In this appeal, the appellant/defendant has raised the following questions of law as substantial questions of law to be answered by this Court under Section 100 of the CPC:-

"1. Whether the Court below is right in shifting the onus of burden on the defendant, when it is placed on the plaintiff under Section 73 of Indian Contracts Act?

2. Whether the Court below is right in decreeing the suit without production of the bills for expenses incurred and whether the Court below ought to have drawn an adverse inference for not producing the best and crucial documents viz., the bills for the expenses said to have been incurred, as required under Section 114 of the Indian Evidence Act?



WEB COPY

expenses of Rs.2,43,000/-. It is submitted that the Appellate Court also committed the same error, though it has reduced the decree amount to Rs.2,00,000/-. It is therefore submitted that the above substantial questions of law arises for consideration in this appeal.

15. That apart, it is submitted that the 2nd respondent has got married during the pendency of this appeal and therefore the impugned judgment and decree results in "unjust enrichment".

16. It is also submitted that the 2nd respondent had filed O.S.No.309 of 2005 for alimony also which was decreed by the District Munsif Court, Kancheepuram vide Judgment and Decree.

17. It is further submitted that the marriage was solemnized 10.11.2002 between the appellant and the 2nd respondent and they parted ways on 18.11.2003. It is therefore submitted that the suit filed after three years from the aforesaid date on 15.02.2006 was time barred.

18. The learned counsel for the appellant further submits that since the marriage was annulled, the 1st respondent was not entitled for compensation.

19. The learned counsel for the appellant relied on the following decisions of the Courts:-

i. Ritesh Tewari and Another Vs. State of Uttar Pradesh and Others, (2010) 10 SCC 677.

ii. Chaturbhuj Pande and Others Vs. Collector, Raigarh, AIR 1969 SC 255.

iii. Pandit Ishwari Prasad Misra Vs. Mohammad Isa, AIR 1963 SC 1728.

iv. Om Prakash Chautala Vs. Kanwar Bhan and Others, (2014) 5 SCC 417 : 2014 SCC OnLine SC 95.

v. Maria Margarida Sequeria Fernandes and Ors. Vs. Erasmo Jack de Sequeria (Dead) through L.Rs., (2012) 5 SCC 370 : 2012 SCC OnLine SC 281.

vi. Cheedella Radhakrishna Sharma and Ors. Vs. Radhakrishnamurthy and Ors., MANU/AP/2751/2014 : 2015(5)ALT634.

20. The learned counsel for the respondents submits that the impugned Judgment and Decree is well reasoned and requires no interference. The learned counsel for the respondents further submits that the Trial Court has noted the admission of the appellant and therefore the finding of fact arrived by the Trial Court cannot be upset in a second appeal. The learned counsel for the respondents submits that no



substantial questions of law arises for consideration.

21. I have heard the learned counsel for the appellant and the learned counsel for the respondents. I have perused the exhibits marked before the Trial Court and the Judgment and Decree passed by both the Trial Court and the First Appellate Court. I have also considered the deposition of the appellant before the Trial Court.

22. Facts are not in dispute regarding the marriage between the appellant and the 2nd respondent. The marriage was an arranged marriage. It was held at D.K.K. Kalyana Mandapam, C.V.Rajagopal Street, Kanchipuram. The marriage expenses were borne by the 1st respondent.

23. Before the Trial Court, the respondents had filed Exs.A1 to A19 while the appellant has not marked any documents to substantiate his case. Before the Trial Court, both the respondents have tendered evidences as PW1 and PW2. The appellant has merely examined himself as the sole witness as DW-1.

24. The appellant has neither produced any other contra evidence to corroborate his defence nor had discharged burden of proof cast upon him to dislodge the case of the respondents.

25. It is noticed that before the Trial Court, the appellant has admitted that the first respondent has borne the expenses for the marriage. The defence of the appellant was merely that of a set-off. He has not disputed the fact that the 1st respondent incurred marriage expenses. He has merely stated that he has also spent some money for the marriage. However, he has not substantiated the same.

26. Barring a bald denial in the written statement that the respondents were not entitled to the aforesaid compensation, there is no contra evidence produced by the appellant before the Trial Court and the Appellate Court. The appellant has also not established the fact that the 1st respondent would not have spent money for the marriage.

27. A statement of a party in a proceeding is an admission. This is clear from a reading of Section 17 of the Indian Evidence Act, 1872. Therefore, the appellant cannot dispute the same as an admission is a statement, whether oral or documentary or contained in electronic form which suggest any inference as to any fact in issue or relevant fact, which is made by any of the persons, under any circumstances.

28. Therefore, the appellant having admitted that the 1st respondent spent money for marriage function cannot dispute the same in an appellate proceeding.

29. As far as the quantum of amount spent by the 1st



WEB COPY

respondent is concerned, the Court can draw an inference based on preponderance of probability. There is preponderance of probability that the 1st respondent would have spent a good amount of money for the marriage, since the marriage was celebrated in a Marriage Hall, it implies, a marriage reception.

30. Not all evidence relating to marriage expenses can be expected to be backed with documentary evidence. The Court cannot be loose sight of the fact that service providers who provide such services in smaller towns are by and large small operators from unorganized sectors. It is also not a commercial practice of such service providers issue bills and invoices for the services.

31. It is not necessary for the Court to always decree suits for damages only based on documentary evidence. The Court can guesstimate and come to a fair conclusion as to the amount that may be been spent by the 1st respondent. If the Court finds the same to be reasonable, it can award the same as damages. After all, the Court has awarded compensation for damage loss sustained by the 1st respondent due to a marriage.

32. The aforesaid amount of Rs.2,43,000/- is not exorbitant for a marriage which was celebrated in the year 2002. The 1st respondent has averred that he had spent money for the celebration of the marriage between the appellant and the 2nd respondent and has tendered oral evidences regarding the expenses incurred by him.

33. On the other hand, the appellant has not produced any other evidence to controvert the claim of the 1st respondent. Therefore, the court is entitled to conclude that there is preponderance of probability of the 1st respondent spent the money. Therefore, the findings rendered by the Trial Court and First Appellate Court cannot be disturbed.

34. Further, under Section 114 of the Indian Evidence Act, 1872, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

35. In a case like the present case, the cause of action for purpose of limitation has to be reckoned from the date of annulment of the marriage ie. on 17.2.2005 when the Court passed judgment and decree in H.M.O.P.No.12 of 2004 and not from the date of actual separation or estrangement between the appellant and the 2nd respondent or the date of their marriage.

36. Therefore, suit filed for damages was well within



the period of limitation. The question of limitation is therefore answered against the appellant.

37. The fact that the appellant suffered from certain physical disabilities but still decided to contract a marriage with the 2nd respondent indicates that the 2nd respondent was deceived and forced undergo the marriage ceremony and marriage expenses.

38. In my view, the appellant has not made out a case for interference against the impugned Judgment and Decree. No substantial questions of law arising for consideration in this appeal. In any event, all the questions raised are answered against the appellant.

39. The appellant was directed to deposit a sum of Rs. 1,00,000/- vide order dated 30.7.2012 by this Court. If the amount was deposited, the it would have also earned income. Therefore, the 1st respondent is permitted to withdraw the same. The Appellant is directed to deposit the balance amount together with the interest as decreed by the First Appellate Court to the credit of O.S.No.26 of 2006 within a period of six weeks. On such deposit, the 1st respondent shall be entitled to withdraw the amount.

40. This second appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

jen

To

1. The District Court II, Kancheepuram.
2. The Subordinate Judge, Kancheepuram.

Copy To

The Section Officer,
V.R.Section, Madras High Court.

+1cc to Mr.G.Suryanarayanan, Advocate, S.R.No.32858

S.A.No.676 of 2012 and
M.P.Nos.1 of 2012 & 1 of 2013

RLD (CO)

GN (27/09/2021)