



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.3434 of 2021

and

C.M.P.No.17525 of 2023

D.Rekha

...Appellant

Vs.

N.Prasanna Venkatesan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the judgment and decree dated 17.09.2021 made in FCOP.No.533 of 2015 on the file of the Family Court, Salem by allowing this Civil Miscellaneous Appeal.

For Appellant : D.Rekha, Party-in-person

For Respondent : Mr.J.Titus Enock



J U D G M E N T

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(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The wife, aggrieved by the grant of divorce under Section 12 (1)

(a) of the Hindu Marriage Act, is on appeal.

2. The spouses were married on 15.09.2013 at Salem. The respondent/ husband was working as a Professor in Hindusthan Engineering College at Coimbatore. It is claimed that certain dowry and gift of gold ornaments were given, which may not be very germane, considering the nature of the dispute that has been raised. The ground on which divorce has been sought for is that the wife is unfit for marital life. The claim of the husband is that the wife is not fit for marital life and she was impotent and therefore he is entitled to divorce under Section 12(1)(a) of the Hindu Marriage Act, on the ground of impotency.

3. The claim of the husband was stoutly denied by the wife and she had contended that it is the husband who had ignored her, left her in the custody of his parents and went to Coimbatore. She would narrate the



incidents that took place when she went to the College where the husband is working to seek reunion. She has also filed application for restitution of conjugal rights in FCOP.No.294 of 2019 on the file of the Family Court, Salem.

4. The application for restitution was resisted by the husband on the same reasons on which he sought for divorce. The husband filed a divorce petition at the Family Court, Coimbatore. The same was transferred to the file of the Family Court, Salem and was tried together along with the restitution petition filed by the wife.

5. During the pendency of the proceedings before the Family Court, the parties were referred to the Government Mohan Kumaramangalm Medical College Hospital for opinion on their fitness for marital life. The Chairman and the Member medical board of the Government Mohan Kumaramangalm Medical College Hospital, Salem had required the wife to attend examination by the Head of the Department of Obstetrics & Gynaecology for a final opinion. The husband was also referred to Medical



Board.

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6. As far as the husband is concerned the Medical Board given a opinion that he is fit for discharging his marital obligation. As far as the wife is concerned she was examined by the Associate Professor of the Department of Obstetrics and Gynaecology, Government Mohan Kumaramangalm Medical College Hospital, Salem and the opinion of the Doctor was marked as Ex.R1. The file of the District Legal Services Authority was marked as Ex.P4, which contains the medical report of the husband and the letter issued by the Chairman of the Medical Board claiming that the wife did not appear for further tests.

7. The learned Family Judge took into account the contents of Ex.P4 and rejected Ex.R1. The learned Judge concluded that Ex.R1 has not been proved by examining the Doctor who had issued the certificate. Therefore, the learned Judge concluded that the wife is not fit to discharge her marital obligation and allowed the petition filed under Section 12(1)(a) of the Hindu Marriage Act. As a consequence, the petition for restitution of



Conjugal rights filed by the wife was dismissed. The wife has not challenged the dismissal of restitution petition. She has only filed an appeal against the order granting divorce faulting her as being impotent.

8. The appellant/ wife had appeared in person and Mr. J.Titus Enock, learned counsel appears for the respondent/ husband.

9. We find that the manner in which the learned Family Judge has dealt with Ex.R1 is wholly unsatisfactory. Ex.R1 contains two pages, the first page is the letter by which the case of the wife is referred to the Head of the department of Obstetric and Gynaecology and on the reverse of it we find the opinion of Gynaecologist which reads as follows:-

“She is fit for sexual intercourse and family life.”

10. There is also reference to the letter by the Medical Board in page No.2 of the said report. It is not seen from the report that the wife was required to undergo any further tests. A conclusive opinion has been given by the Gynaecologist.



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11. Mr. J.Titus Enock, learned counsel appearing for the respondent / husband would however contend that she was referred to the Head of the Department of Gynaecology, but, Ex.R1 is signed by the Associate Professor. That by itself cannot belittle the medical opinion that has been rendered after thorough examination.

12. We are not able to appreciate the conclusion of the Family Court that the author of the document has not been examined. If Ex.R1 is rejected on that ground Ex.P4 is also to be rejected on the same ground because no Member of the Medical Board has been examined to prove the contents of the Ex.P4 also. Once examination has been carried out by the competent medical professional and if certificate is issued, that too, by a Government Doctor, Courts cannot adopt a pedantic approach and demand examination of the Government Doctor, more so, when no application was made before the Trial Court for examination of such witness. Once Ex.R1 demonstrate that the wife is fit for marital life, the grant of decree for divorce under



Section 12(1)(a) is unacceptable.

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13. There must be unimpeachable evidence in order to support the decree for divorce under Section 12(1)(a) of the Hindu Marriage Act. The learned Family Judge has shifted the onus on the wife to prove that she is fit for family life. The right course of action was adopted by the Court to have the parties referred for medical opinion. But, when such medical opinion was received, the family Court completely erred in rejecting Ex.R1 and concluding that the wife is unfit for matrimonial life.

14. We are therefore unable to sustain the finding of the learned Family Judge. The appeal is therefore **allowed**. The decree for divorce granted is set aside. All the observations made by the Family Judge with regard to the fitness of the appellant/ wife for discharging her marital obligation are set aside. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
09.11.2023

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Index :No
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Neutral Citation :No
Speaking order
To

The Family Court Judge, Salem.

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and
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