



C.M.A(MD)No.940 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	21.12.2023
Pronounced on	22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.940 of 2023

J.Kingston Samuel

... Appellant

-VS-

R.Jacinth Christabel

... Respondent

PRAYER: Civil Miscellaneous Appeal - filed under Section 19 of the Family Court Act, 1984, to set aside the order in IDOP No.12 of 2014 dated 20.08.2015 on the file of the Family Court, Tirunelveli.



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C.M.A(MD)No.940 of 2023

For Appellant : Mr.M.Babu Sudha
Legal Aid Counsel
For Respondent : Mr.RM.Arun Swaminathan
Legal Aid Counsel

JUDGMENT

(Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**)

Challenging the order of the Family Court, Tirunelveli made in IDOP No. 12 of 2014 dated 20.08.2015, the appellant / husband preferred this appeal on the ground that misrepresentation is not a ground of declaring the marriage as nullity.

2. From the lower Court records, it is seen that the learned counsel appearing for the husband has withdrawn his appearance and he contested the case for himself before the trial Court. As per the direction of the Court, legal aid assistance was given to the parties. Legal aid counsel were appointed for both the parties and heard both of them. For the sake of convenience, the parties are described as per their previous relative status.



C.M.A(MD)No.940 of 2023

WEB COPY 3. Brief facts leading to filing of the above case are under:-

(a) The parties are Christians and the marriage between them was solemnized on 09-09-2010 at Holy Trinity Church, Maharajanagar, Palayamkottai. At the time of marriage, the wife was provided with necessary jewels, sovereigns of gold and house hold articles worth Rs.10 Lakhs.

(b) The wife is a handicapped lady, due to the illness of Myclomalacia of dorsal spinal cord and she is not able to walk by utilizing her legs.

(c) The wife, who is suffering from Myclomalacia of dorsal spinal cord is employed in IOB.

(d) The divorce proceedings filed on the basis that the husband approached the parents of the wife, pretending that he is a graduate working in Veedol Oil Ltd having a sufficient salary, that he wanted to give life to a handicapped lady representing that his father has deserted his mother and him. Out of his hard work, he has studied and was working and maintaining his mother.

(e) Believing the words of the husband as well as his mother, the parents of the wife gave consent for marriage and he was fortunate having a marital life with the wife. As parents of wife were concerned about the marriage of their handicapped daughter, believed the words of the husband and his mother, the



C.M.A(MD)No.940 of 2023

WEB COPY

marriage was solemnized. As the wife is a handicapped lady, the husband was having stayed in her house.

(d) As per the pleadings of the wife, on the 9th day of the marriage, the respondent showed his true colour and demanded to include his name in the bank account of the wife along with her as a joint account. He demanded a separate house to be purchased for them. Each & every step of the husband was focused to get the assets of the petitioner and it was also identified by the wife and her family members at later point of time. As a result of which, the husband left the home and did not come back.

(e) It is further pleaded as well as from the evidence of P.W.1 that the parents of the wife has unearthed the foul play and fraud play by the husband that he has not even a graduate. When the parents of the wife made an enquiry in order to get employment for the husband, the facts came into fore. It is alleged that on coming to know that the husband committed a fraud, he has man-handled the wife and also her father, who is a retired professor and uttered filthy language. Hence he prayed for the marriage as nullity, since the marriage was solemnized on fraud misrepresentation. Hence, the case came to be filed.



C.M.A(MD)No.940 of 2023

WEB COPY

4. After exchange of legal notices, the case in IDOP.No.12 of 2014 was instituted. In the counter statement, the husband has denied that the allegation is false and the alleged cruelty was also denied and he admitted that he has consummated the marriage. However, he has not committed sexual act as alleged by the wife.

5. During the trial, it appears that both the parties have let in evidence. The wife was examined herself as P.W.1. Exs.P1 to P9 were marked. The husband was examined himself as R.W.1. Exs.R1 to R5 were marked.

6. The learned legal aid counsel appearing for the husband would contend that misrepresentation is not a ground for nullity of marriage. Therefore, the grant of nullity of marriage is unsustainable in law.

7. Heard the learned legal aid counsel for the appellant and the respondent and perused the oral and documentary evidence available on record. Counter statement of the husband is taken into consideration and answer illustrated in the cross examination assumes significance as observed infra.



8. During the cross examination, the husband had admitted that the date of birth given in Ex.P1 marriage certificate and in Ex.P8, bio-data given by the husband before the marriage is false. Furthermore, he has admitted in the cross examination that his actual date of birth is 23.10.1980, which is contrary to the date of birth given in Ex.P6, bio-data. Ex.P7 is the marksheet said to have been secured by the husband. As per Ex.P7, mark sheet issued by the college, it appears that he has not qualified even BA degree and he has got multiple arrears in the course and it also assumes significance.

9. On going by the biological date of birth of the husband in the educational certificates, we find that he is three years younger to the wife. He has suppressed his original date of birth and his educational qualification.

10. It is a specific evidence of the wife as P.W.1 that two days, they stayed together in a hotel. After exchange of conversation, she had specifically stated that she is a M.Com Gold Medalist and also she initially joined as a clerk in the bank and now promoted as Manager. She has disclosed every factum of her



C.M.A(MD)No.940 of 2023

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physical disability as well as her educational qualification and her earnings even prior to the marriage. In her cross examination, she has specifically stated that during pre-marital meeting with the husband, the husband has totally acted to make everyone believable as the particulars in the bio-data are correct. Till the consummation of marriage, the husband successfully misrepresented his qualification as BA graduate and also misrepresented about his employment.

11. The trial Court had dealt with in detail and had given a specific finding that based upon Ex.P1, marriage certificate, Ex.P6, bio data given by the husband that was prior to marriage, Ex.P7, educational certificate from university, Ex.P8 employment recommendation letter, the entire profile projected by the husband is totally false.

12. After the marriage, when the wife asked for educational certificate, the cat came out of the bag. The trial Court has also taken into consideration the admissions made by the husband, RW1. In his cross examination, he stated that he has not completed his BA course and he has not got any employment. Even in the letter given by his company, where he was employed, his date of birth is



C.M.A(MD)No.940 of 2023

WEB COPY

mentioned as 23.10.1980, which is contrary to his declaration made in the church and also found in Ex.P1, marriage registration certificate and he has also stated that he has no employment. Thus, the finding of the trial Court that only by misrepresentation, he had contracted the marriage by making them to believe the facts in bio-data is correct

13. The husband has subsequently shown his colour by torturing the wife to purchase a house in order to get the assets of the wife in his name. He has also demanded on the 9th day after the marriage to include his name in the bank account of the wife along with her name as a joint account.

14. The pleadings as well as the proof affidavit as well as the cross examination of the wife, it is admitted that the wife is physically disabled person, due to sufferance of Myclomalacia of dorsal spinal cord and she was employed in Indian Overseas Bank. Ex.R3 certificate issued by the government, it shows that the wife has 80% disability. R.W.1, husband has stated that the physical disability was suppressed by the wife before marriage. The disability certificate clearly shows that the disability is visible.



C.M.A(MD)No.940 of 2023

WEB COPY

15. The learned family Court judge has clearly recorded the finding of the that due to the physical disability, the wife could not walk and reach the family Court and to record evidence. Hence, we find that the contention raised by the husband that the physical disability was suppressed by the wife before marriage could not be countenanced at the threshold, which disability is visible even for naked eye.

16. As rightly observed by the learned family Court judge, we also find that all information furnished by the husband before marriage appears to be false. The true colour of the husband has been shown within three days from marriage that he demanded the wife, who is unable to move his legs to joint his name in her bank account so as to enable the husband to withdraw the amount. It is also stated that he compelled the wife to register a house in his name and he has also behaved in a rude manner during the physical relationship and hence, we are satisfied that the husband had treated the wife with cruelty to such an extent, even a normal woman could not live with him.



C.M.A(MD)No.940 of 2023

WEB COPY

17. Even the aforesaid facts, which have not been denied by the husband during his chief examination assumes significance and hence, the allegation made in the pleadings by the wife and the evidence in the proof affidavit remains unchallenged to the extent that the wife had however been committed cruelty in the hands of the husband.

18. From the 9th day onwards, he left the matrimonial home and has not taken any steps for reunion with the wife and they were living separately from the date of filing of this case. The legal notice issued by the wife is on 24.12.2010 and reply given by the husband is on 31.12.2010. The case was filed on 11.04.2011 and the case was taken on file in IDOP No.84 of 2011 by the Principal District Judge, subsequently made over to the first additional District Judge. Subsequently, in the middle of the cross examination of the wife, the matter was referred to mediation, which came back to the Court for the judicial pronouncement. The case was transferred by order dated 30.07.2014.

19. Hence, we find that the husband has committed cruelty as defined in *Samar Ghosh V. Jaya Ghosh* reported in (2007) 4 SCC 511, and we find that the



C.M.A(MD)No.940 of 2023

WEB COPY

husband has treated the petitioner with cruelty and it could be armful or injurious for the petitioner to live with the husband. As we observed earlier, physical cruelty has been spoken by the wife, P.W.1 and the mental cruelty has also been specifically uttered. There is no challenge to such version of the wife, P.W.1. Hence, this Court has taken into consideration that the wrong quoting provision of law is not a stand for the parties to dissolve the marriage of a handicapped woman at 80% of disability.

20. The wife has successfully demonstrated that the entire particulars given by the husband regarding date of birth, age, educational qualification and employment appears to be false. Based upon the such false representation, she has given consent for dissolving the marriage. Only after solemnization of the marriage, the husband has shown his colour and treated her with cruelty by demanding to include his name in her salary account and to purchase a house in his name. Moreover, she and her father, who is an aged person were physically assaulted.



C.M.A(MD)No.940 of 2023

WEB COPY

21. Considering the aforesaid facts and circumstances, we are not inclined to interfere with the order made in IDOP No.12 of 2014 dated 20.08.2015 on the file of the Family Court, Tirunelveli and in fine, this civil miscellaneous appeal is dismissed. No costs.

[T.K.R., J.] [P.B.B., J.]

22.12.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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C.M.A(MD)No.940 of 2023

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To

1. The Family Court, Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.940 of 2023

RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

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Pre-delivery Judgment made in
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Dated:
22.12.2023