



C.M.A.(MD)No.145 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.145 of 2010

Usha Margilada

... Appellant/Respondent

Vs.

J.Henry Suresh David

.. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act 4 of 1869 against the judgment and decree dated 02.07.2009 made in I.D.O.P.No.100 of 1987 on the file of the District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.Thiagarajan
(Reported no instructions)

For Respondent : Mr.K.N.Thambi

JUDGMENT

The above appeal has been filed challenging the order of the trial court in declaring the marriage between the appellant and the respondent as null and void.



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2. The appeal arises under the following circumstances:

i)The respondent herein filed a petition to declare the marriage as a nullity on the ground that the appellant had suppressed the fact that she was suffering from mental illness; that the respondent was not allowed to talk to the appellant prior to the marriage; that the marriage took place on 19.06.1985; that the respondent left for Libya on 14.07.1985 as he was employed there; that though he had noted certain abnormal behavior of the appellant, he could not take a decision and only after the appellant came to Libya he came to know of the fact that the appellant was suffering from Schizophrenia; that the appellant behaved abnormally; that she used to put her hand in heated oil; that she abused the respondent in filthy words; that while the respondent brought the appellant to India, she beat the respondent in the presence of strangers; that there are medical reports to show that the appellant suffered from a very serious mental illness and was not capable of conjugal relationship.

ii) The appellant herein filed a counter stating that the averments in the petition were false and invented for declaring the marriage as null and void; that though she was treated by Dr. Surendran, the illness is not of such a nature that would render the marriage a nullity; and that it was



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the respondent who committed cruelty on the appellant and prayed for dismissal of the petition.

iii) Before the trial court, the respondent examined P.W.1 to P.W.5 and marked Ex.A.1 to Ex.A.19. The appellant examined R.W.1 and marked Ex.B.1 to Ex.B.8. The trial court, after considering the oral and documentary evidence, held that the respondent established that the appellant suffered from mental illness, which was not disclosed to the respondent and declared the marriage null and void.

3. The learned counsel for the appellant reported no instructions from the appellant and expressed his inability to make his submissions; and that she came to know from the lower court counsel that the appellant is no more. He also submitted that this fact could not be verified. This Court had directed the Registry to send notice of hearing to the appellant, which could not be served.

4. The learned counsel for the respondent per contra submitted that the judgment of the trial court declaring the marriage as null and void is based on the evidence on record and there is no infirmity in the said finding.



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5. Though the learned counsel on instructions would submit that there is every chance that the appellant is no more, the said fact could not be ascertained. Since the case is of the year 2010, this Court proposes to decide the case on merits, on the basis of the records and the submissions of the learned counsel for the respondent, as further delay in disposal of the case would not be in the interest of the parties.

6. The point for consideration in the instant appeal is as follows:

Whether the respondent is entitled to a declaration that the marriage between the appellant and the respondent is null and void.

7. As stated earlier, the respondent had examined five witnesses. The Doctor, P.W.5, who treated the appellant had given a report, which is marked as Ex.A.8. In the said report, the Doctor had opined that the appellant was not in a sound state of mind and that she suffered from 'Schizophrenia'. P.W.5 in his deposition reiterated the contents of the report given by him. According to P.W.5, the appellant suffered from a serious mental illness in the past. That apart, it is seen from Ex.A.4 (Admission registers) that the appellant was admitted in the psychiatric ward in Ramakrishna Hospital at Trivandram before marriage. Ex.A.5



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and Ex.A.6 are the copies of the admission registers evidencing that the appellant was admitted in the said hospital even thereafter. Though those documents were disputed by the appellant, it is seen from the cross-examination of the appellant that she had admitted that in those documents, the patient's name is mentioned as 'Usha' and her father's name also had been referred. Further, the respondent had also marked the letters written by the brother of the appellant Ex.A.11 and Ex.A.12 in which he had admitted that her sister was taking treatment for mental illness. Hence, this Court is of the view that the respondent had established that the appellant suffered from a mental illness. The evidence adduced on the side of the appellant and on the side of the respondent has been discussed in detail by the trial court. On a re-appreciation of the evidence on record, this Court finds that the respondent has established that the appellant suffered from mental illness and therefore, she was incapable of any conjugal relationship and this fact was suppressed to the respondent.

8. Therefore, this Court finds no infirmity in the judgment of the trial court. The point for consideration is answered accordingly.



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9. In fine, this Civil Miscellaneous Appeal is dismissed. No costs.

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Index : Yes / No
Neutral Citation : Yes / No
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To

1. The District Judge, Kanyakumari at Nagercoil.

2. The Section Officer,
V.R.Section,

Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

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Judgment made in
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