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C.M.S.A.(MD) No.3 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.S.A.(MD) No.3 of 2023

M.Hariramakrishnan
S/o.Manian

... Appellant

Vs.

Sudha
D/o.Muthaiah

... Respondent

Prayer:- Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1955 to set aside the fair and decretal order passed in H.M.C.M.A.No.32 of 2022 on the file of the III Additional District Court, Tirunelveli, dated 02.02.2023, confirming the fair and decretal order passed in H.M.O.P.No.3 of 2019 dated 12.04.2022 on the file of the Sub-Court, Tirunelveli granting dissolution of marriage and to grant decree of nullity of marriage.

For Appellant : Mr.H.Arumugam

For Respondent : Mr.VRG.Mohan
[Legal Aid Counsel]



C.M.S.A.(MD) No.3 of 2023

WEB COPY

J U D G M E N T

The appellant, aggrieved by the concurrent finding of the trial court and the lower appellate court in rejecting his prayer for declaration of the marriage between him and the respondent as null and void under Section 12 of the Hindu Marriage Act, 1955, has preferred this second appeal.

2. The facts leading to the filing of this second appeal are as follows:

- (a) The appellant married the respondent on 07.05.2017.
The marriage was solemnized under the Hindu Marriage Act, 1955.
- (b) In October 2017, the appellant came to know through a pamphlet that the respondent had earlier relationships with several men and had, in fact, aborted a child in a hospital at Mumbai, mentioning one Mr. Vishal Shah as her husband. On further verification, he came to know that the contents of the pamphlet were true.
- (c) Hence, he filed a petition praying for the nullity of marriage and, in the alternative, for the grant of a decree of divorce on the ground of cruelty.
- (d) The respondent filed a counter denying the averments in the petition and stating that the contents of the pamphlet were not true and that the allegations made by



C.M.S.A.(MD) No.3 of 2023

the appellant were false, and, therefore, the appellant was neither entitled to a decree of nullity nor a decree of divorce.

- (e) The trial court found that the appellant made out a case under Sections 12 and 13 of the Hindu Marriage Act, 1955, and however granted a decree of divorce instead of a decree of nullity as prayed for by the appellant.
- (f) The appellant challenged the said finding before the lower appellate court, stating that since the trial court had found that the case fell under Section 12(1)(c) of the Hindu Marriage Act, 1955, the trial court ought not to have denied the prayer for a decree of nullity.
- (g) The lower appellate court found that the appellant had not established that the respondent had a spouse living at the time of the marriage, and therefore, the conditions under Section 5 of the Act were not fulfilled to declare the marriage as null and void. However, the lower appellate court held that the appellant had proved cruelty and therefore was entitled to divorce on the said ground.

3. The learned counsel for the appellant submitted that the trial court, having found that the appellant had established a case for nullity of marriage, erred in granting a decree of divorce when the main prayer was for a decree of nullity and that the lower appellate court had erroneously



C.M.S.A.(MD) No.3 of 2023

held that the case under Section 12(1)(c) of the Hindu Marriage Act, 1955 was not made out by the appellant, in the absence of any challenge by the respondent to the finding of the trial court. The learned counsel for the appellant, on facts, submitted that the respondent had admitted that the mobile number in the abortion form maintained in the hospital at Mumbai belonged to her, which proves that she underwent abortion; that she had suppressed the said fact from the appellant and therefore, it would amount to fraud as to the material fact concerning the respondent; and that hence, the appellant is entitled to a decree of nullity.

4. The learned counsel for the respondent, per contra, submitted that though it is the case of the appellant that the respondent had married Mr.Vishal Shah, Ex.P11 cannot be taken as a document to prove the marriage; that the lower appellate court was right in holding that the marriage between the respondent and the said Mr.Vishal Shah was not proved; and that the Doctor, who had made entries in Ex.P11, was not examined, and therefore, it cannot be inferred that the person mentioned in the said document refers to the respondent; and that therefore, no interference is called for in the judgment of the lower appellate court.



C.M.S.A.(MD) No.3 of 2023

5. This Court, while admitting this second appeal, framed the following substantial question of law:

When the trial Court has categorically given a finding about the suppression of the material fact of previous marriage of the respondent and termination of pregnancy two times out of the said marriage, whether is it justified in not granting the decree of nullity of marriage invoking Section 5(i), 11 and 12(c) and (d) of the Hindu Marriage Act, 1955?

6. The admitted fact is that the appellant and the respondent got married on 07.05.2017. The appellant filed a petition praying for a decree of nullity on the grounds that the respondent had suppressed her relationship with one Mr.Vishal Shah and the termination of her pregnancy caused due to that relationship.

7. The appellant had examined himself as P.W.1 and marked a pamphlet, which is said to have been found in the street where both of them were living. Based on the said Pamphlet, the appellant had made some enquiries and found out that the respondent had admitted herself in the hospital for termination of pregnancy. Ex.P11 is the document produced on the side of the appellant, which includes the findings of the



C.M.S.A.(MD) No.3 of 2023

Doctor and the medical records pertaining to the respondent. In the said document, the respondent had shown the said Mr.Vishal Shah as her husband. It is the case of the respondent that the said document does not pertain to her. However, in the said document, it is seen that the phone numbers of both the said Mr.Vishal Shah and the respondent have been mentioned. The Aadhar Card of the respondent (Ex.P18) produced on the side of the appellant contains her phone number, which tallies with the phone number in Ex.P11. That apart, this Court finds that the signature in Ex.P11 tallies with the other admitted signatures of the respondent contained in Exs.P13 and P14. The respondent had also admitted that she knew the said Mr.Vishal Shah, though she had denied the specific relationship between them alleged by the appellant. It is also the fact that the appellant had not established the marriage of the respondent with the said Mr.Vishal Shah or with any other person. Ex.P11 cannot be a proof of marriage.

8. Similarly, the appellant has also not established that the respondent was pregnant at the time of the marriage. Therefore, Section 12(d) of the Act is also not made out. However, from the foregoing facts, it is seen that the consent of the appellant was obtained by deception as to



C.M.S.A.(MD) No.3 of 2023

the material fact concerning the respondent. Deceit can be by making a false statement and also by suppression of facts. The material fact suppressed is that the respondent had a relationship with the said Mr.Vishal Shah and had terminated the pregnancy due to the said relationship. Further, in the said document (Ex.P11), i.e., the case sheet register, it is noted that the respondent had suffered a miscarriage two years prior to the termination that occurred in 2015.

9. It is seen that non-examination of the Doctor would not be of any consequence, as the record produced by the appellant is a public record. The respondent had not taken any steps to let in any contra-evidence on this aspect. The fact that the signature and the phone number tallies with that of the respondent is sufficient to hold that the document is genuine. The document was produced by the hospital authorities on the summons issued by the trial court and its genuineness cannot be doubted. Therefore, this Court is of the view that the appellant is entitled to a decree of nullity under Section 12(1)(c) of the Hindu Marriage Act, 1955, as the respondent had played fraud by deceiving the appellant as regards a material fact concerning her. The substantial question of law is answered accordingly.



C.M.S.A.(MD) No.3 of 2023

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10. In the result, the impugned order is set aside and a decree of nullity of marriage is granted to the appellant under Section 12(1)(c) of the Hindu Marriage Act, 1955, as prayed for. This Civil Miscellaneous Second Appeal is allowed. No costs.

18.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The III Additional District Judge,
Tirunelveli, Tirunelveli District.
- 2.The Sub-Judge,
Tirunelveli, Tirunelveli District.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court, Madurai.



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C.M.S.A.(MD) No.3 of 2023

SUNDER MOHAN, J.

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C.M.S.A.(MD) No.3 of 2023

18.09.2024