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CMSA No. 2 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-07-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMSA No. 2 of 2022

G. Ravikumar
S/o.Late. S.Gopalakrishnan,
No.38, Cooperative Colony 1st Street,
Gandhi Nagar, Namakkal-637002

Appellant(s)

Vs

Deepa Rao
D/o.Late.G.Raghavendran,
No.3, I Cross Street, Eswari Nagar,
Tambaram East, Chennai-59

Respondent(s)

CMSA No. 2 of 2022

PRAYER

To set aside the fair and decreetal order dated 01.11.2021 made in CMA No.9 /2016 on the file of the Principal District Judge, Chengalpattu confirming the fair and decreetal order dated 15.02.2016 made in HMOP No.355 of 2012 on the file of the Subordinate Judge, Tambaram by allowing this Civil Miscellaneous Second Appeal.



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For Appellant(s): Mr.A.V. Arun Asst. By
Mr.M.A.Aruneshe

For Respondent(s): No Appearance

JUDGMENT

Challenging the concurrent finding of the courts below held in C.M.A.No.9 of 106 dated 01.11.2021 on the file of Principal District Judge, Chengalpattu confirming the fair and decreetal order dated 15.02.2016 made in HMOP. No.355 of 2012 on the file of Subordinate Judge, Tambaram, the appellant husband preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the petition filed before the trial court.

3. Before the Sub-Court, Tambaram, the petitioner filed a petition in H.M.O.P.No.355 of 2012 under Sec.12(1)(c) of Hindu Marriage Act to declare the marriage between the petitioner and respondent as null and void as the marriage was not consummated, since the respondent was suffered with the skin disease of Keloid. The respondent contested the case stating that at the time of proposal of marriage itself, the petitioner and his parents were informed about



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the said Keloid and thereafter, only the marriage was arranged. After that, the petitioner/husband, even the family members of petitioner have expressed that the said Keloid would not be an hindrance to the marital life. After that, the petitioner's attitude was changed and he is not intended to live with her. Further, the marriage was also not consummated and she had left from the matrimonial home. Therefore, she prayed to dismiss the petition, since they have not suppressed the fact about the skin disease of Keloid nor it is contagious one.

4. Before the trial court, both parties adduced evidence and on hearing both sides, even on the side of respondent, one of Doctor was also examined as R.W.2, who deposed that Keloid is not a contagious or communicable disease or incurable disease. Considering the evidence of both parties, the trial judge held that the alleged Keloid is not an incurable disease and the petitioner failed to prove that they were not informed about the disease at the time of marriage by examining any of family members. Accordingly, the petition was dismissed.

5. Challenging the said findings, he preferred an appeal in A.S.No.9 of 2016 before the Principal District Judge, Kancheepuram. The first appellate



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judge also analysed the evidence on record and considering submission of both sides, held that though there is no scope for reunion, the marriage is irretrievably broke down, but divorce cannot be granted as sufficient reason for divorce has not been stated. Accordingly, the findings of trial judge is confirmed and the first appeal was dismissed. Challenging the said findings, now the appellant preferred this Civil Miscellaneous Second Appeal.

6. Admittedly, the petitioner and the respondent have got married on 11.05.2012 at Kone Krishna Reddiar Community Welfare Hall, Mudichur Road, Tambaram West, Chennai and their marriage was arranged marriage. According to the petitioner, he was employed in Bangalore and the respondent was employed as a Teacher at Tambaram. At the time of marriage, they did not visit to see each other and during nuptial night, first time they met privately, but the respondent wife not allowed to touch her and she was very aloof and withdrawn. After the long conversation, she confessed that she is suffered from skin disease of Keloid and she always afraid of any injury and her chest and other parts of the body was suffered with the said disease and she also expressed



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that she cannot stand prolonged exposure before the sunlight and she could not consume tea and some of special meals. Therefore, the marriage was not consummated and within two weeks of marriage, she expressed her sickness to her family members and left matrimonial home within two weeks. Therefore, he come forward with the petition for divorce under Sec.12(1)(c) as her family suppressed about the disease and conducted the marriage. Since the marriage was not consummated, he prayed to declare the marriage as null and void.

7. The respondent wife filed objections, but she admits that she had been suffering from skin disease of Keloid but she presumed that as her family members informed about the skin disease to the petitioner as well as parents of petitioner, all were agreed and stated that it can be cured by ayurvedic treatment and thereafter only, the marriage was arranged. Further, she also admits that the marriage was consummated, but the petitioner falsely alleged that she and her family members suppressed about the disease as such is false one. Before the trial court, on the side of petitioner, he was examined as P.W.1 and on the side of respondent, she was examined as R.W.1. The Doctor was examined as R.W.2



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and as per his evidence, skin disease is not contagious nor incurable disease and it is not an hindrance to the marital life. Based on that, the trial judge dismissed the petition stating that the reason assigned by the petitioner was not acceptable one. The first appellate court has also agreed and also confirmed the findings of trial judge.

8. Today, when the matter taken up for arguments, there was no representation for the respondent wife. But, the learned counsel for appellant would submit that the courts below failed to take note of the fact that skin disease of Keloid was not informed to the petitioner and his family members at the time of marriage, in fact, the respondent took treatment nearly about 10 years before the marriage and if at all, the said skin disease is informed, the petitioner and his family members would not have accepted for the said proposal, but the courts below erroneously concluded that the said disease is not incurable one, she is fit for marital life. Burden cast upon the respondent to establish that the petitioner's family was informed about the skin disease, but to that effect, there was no proper evidence on the side of respondent. So, the very



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intention was right and betrayed by her and her family members Therefore, the petitioner has rightly approached the court to declare the marriage as null and void. Moreover, in the counter statement, the respondent also admit that marriage was not consummated and issue between parties arose because of skin disease of Keloid. Therefore, the petitioner is able to establish that there is a suppression about the skin disease of Keloid and the same was also been proved on his side, but the courts below failed to appreciate the same. However, the first appellate court made an observation that the marriage is irretrievably broke down. That apart, the suppression of fact whether the skin disease of keloid is curable or incurable is not the matter, whether the respondent had disclosed those facts to the petitioner family at the time of marriage alone is to be decided. To that effect, there is no material evidence on the side of respondent. Therefore, the petition under Sec.12(1)(c) would be sustainable one. Accordingly, the question of law (b) is answered.

9. It is also an admitted fact that Doctor, who issued certificate, he was not examined, but another doctor was examined, but even though the doctor,



who was examined was also sufficient. Therefore, the evidence of R.W.2 is acceptable. But as discussed above, the question of law (D) is answered.

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Considering that, there is no necessity to go for other question of law. As discussed above, the suppression of fact between family about skin disease of Keloid in the body of respondent, besides the marriage also not consummated. So, there is no scope for reunion. Accordingly, the petitioner is entitled to get divorce and the findings of first appellate court held in C.M.A.No.9 of 2016 on the file of Principal District Judge, Chenalpattu confirming the findings of trial court in H.M.O.P.No. 355 of 2012 is set aside. Thus, this Second Appeal is allowed. No costs.

18-07-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. Subordinate Judge, Tambaram.
2. Principal District Judge, Chengalpattu
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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