

C. Padmavathi Vs. Veerendra Kumar

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Court : Karnataka

Decided On : Nov-02-2016

Judge : Jayant Patel & Aravind Kumar

Appeal No. : M.F.A.No. 4521 of 2014 (MC)

Appellant : C. Padmavathi

Respondent : Veerendra Kumar

Judgement :

(Prayer: This appeal is filed under Section 28(1) of Hindu Marriage Act, against the Judgment and Decree dated 21.12.2013 passed in M.C.No.39/2006 on the file of the Senior Civil Judge, CJ, Chickballapur, allowing the petition filed under Section 12(1) (b) of Hindu Marriage Act.)

Aravind Kumar J.

1. Appellant - wife being aggrieved by the judgment dated 21.12.2013 passed in M.C.No.39/2006 by the Sr. Civil Judge, Chikkaballapur allowing the petition filed by respondent husband and nullifying the marriage solemnized between them on 24.09.2004, has preferred this appeal.

2. Facts in brief are as under:

Respondent herein filed a petition under Section 12(1)(b) of the Hindu Marriage Act, 1956 seeking nullification of the marriage solemnized on 24.09.2004 between himself and the appellant herein contending inter alia that after marriage appellant was residing in the matrimonial home at Bagepalli along with her sister and she was not responding as expected of her. It was further stated that respondent was not capable of giving a valid consent to the marriage and there was no cohabitation between them and she was behaving in an immatured way, totally incompatible to her age. It was contended that she was suffering from mental illness from her childhood and she was treated at NIMHANS, Bangalore during January 2005 and she was accompanied by her parents. It was also further alleged that appellant is suffering from mental illness and parents of the appellant being aware of this fact, had not disclosed the same and had performed the marriage with him. Hence, he sought for nullifying the marriage.

3. Appellant on service of notice before the trial Court appeared and filed statement of objections and denied the averments made in the petition. She further alleged that respondent husband was in the habit of consuming liquor, indulging in gambling and having illicit intimacy with women and using vulgar language against her. She also alleged that respondent had taken dowry at the time of marriage and was harassing to bring more dowry from her parents and on account of said demand not being met, she was being ill-treated. On these amongst other grounds, she has sought for dismissal of the petition.

4. The respondent husband got himself examined as P.W.1 and also examined one Dr. Ravi as P.W.2 and produced three (3) documents and got them marked as Exs.P-1 to P-3. Respondent did not cross-examine P.W.2 and also did not choose to lead evidence. Appellant did not get herself examined and no documents were produced on behalf of the appellant.

5. Trial Court on appreciation of evidence and scrutiny of pleadings allowed the petition by concluding that the Doctor who had treated the appellant wife had deposed as P.W.2 and had produced the case sheet, which came to be marked as Ex.P-1, which disclose that appellant wife had lost interest in her life and she was taking treatment for depression and suffering from mental illness. It was also

concluded by the trial Court that evidence of P.W.1 and P.W.2 had remained unchallenged and the conduct of wife in not attending the Court would also disclose that she was not willing to defend the petition. On these grounds amongst others as discussed by the trial Court petition came to be allowed.

6. We have heard the arguments of Sri. B.M. Lokesh, learned counsel appearing for appellant and Sri. G. Balakrishna Shastry, learned counsel appearing for the respondent. Perused the records secured from the trial Court.

7. It is the contention of Mr. B.M. Lokesh, learned counsel appearing for the appellant that judgment of the trial Court is passed exparte and the trial Judge erred in not considering the plea put forward by the appellant wife in her objection statement by evaluating the same in proper perspective. He would also submit that after examination-in-chief of P.W.1 on several dates of hearing he was not available and on 15.03.2013 he was present and on behalf of appellant wife the trial Court recorded as having not cross-examined P.W.1 and on the same day P.W.2 came to be examined and it has been recorded as cross-examination being NIL . Hence, on the ground of lack of opportunity being extended to the appellant wife by the trial Court he seeks for setting aside the judgment of trial Court and prays for allowing the appeal and in the alternative, he would pray for remanding the matter back to the trial Court for adjudication afresh by affording the appellant wife opportunity to defend her case.

8. Per contra, Sri. G. Balakrishna Shastry, learned counsel appearing for respondent would support the judgment of trial Court and prays for dismissal of the appeal.

9. Having heard the learned Advocates appearing for the parties and after bestowing our careful and anxious consideration to the rival contentions and on perusal of the trial Court records, we are of the considered view that following points would arise for consideration:

1. Whether the judgment of the trial Court suffers from any infirmity either in law or on facts calling for interference?

2. Whether the appellant wife was extended all reasonable opportunities to defend her right or not?

3. What order?

10. Since we have already narrated the pleas of respective parties, repetition of the same would only be burdensome and as such, it is not delved upon, except to the extent required for adjudicating for the points formulated hereinabove. Since discussion and adjudication of Point Nos.1 and 2 would overlap, they are taken up together. We have considered record and proceedings of trial Court.

RE. POINT Nos.1 and 2:

11. It is not in dispute that appellant married respondent on 24.09.2004 at Tumkur. After the marriage she was residing at her matrimonial home and as could be seen from the records the parents of the appellant were visiting their daughter quite often and the mother of the appellant had taken her daughter after few months and thereafterwards, the appellant wife did not returned to her matrimonial home.

12. It was specifically contended by the respondent husband that his wife-appellant had no cohabitation with him and she was behaving like a child, which was totally incompatible to her age. It was also contended that she was suffering from mental illness prior to her marriage itself and she was not sexually matured. The plea put forward by the respondent husband in his petition came to be reiterated in his evidence tendered on 04.04.2008. Since the petitioner had specifically contended that his wife - appellant was suffering from mental illness, burden was upon him to prove this fact. Hence, an application came to be filed for summoning the records from NIMHANS and also to summon the Doctor to give the evidence with regard to mental condition and status of appellant wife. These two applications came to be allowed by the trial Court and the records came to be tendered and the Doctor who had examined and treated the appellant wife was examined as P.W.2. In his examination-in-chief dated 23.11.2013 he has stated that Smt.Padmavathi (appellant herein) was treated by him on 06.01.2005, 03.02.2005 and 08.02.2006. He has also stated that she is suffering from severe depression and is always sad with a mental status that she should not live

anymore. He has also stated that she is exhibiting disinterestness towards everything in life and was over sleeping. He has also further stated that she was always under the impression that she has committed some mistake in her life apart from being unhygienic and not mixing with anyone. In conclusion the doctor - P.W.2 has opined that on complete examination of Smt.Padmavathi he found that she was suffering from insanity and his advice to take treatment as inpatient did not find favour and during 2005 she was in manic stage. The entire case sheet relating to the treatment of appellant came to be produced by P.W.1 and marked as C Series namely, C1 - from pages 1 to 23. A perusal of said report would indicate that the evidence tendered by the Doctor is extracted at different places of the case sheet as and when the appellant wife was examined by the Doctors. In fact, in case sheet it has been recorded that patient is almost mute, looks distress, restless, continuously crying and refuses to speak, are some of the recordings. The various facets of the patient has also been recorded in the case sheet and in conclusion, under the heading Formulation it is recorded as under:

25 years married lady from Tumkur, nil contributory family H/o, past H/S/O manic episode 8 years ago treated at NIMHANS, premorbidly well adjusted, presents with 3m insidious onset, continuous illness characterized by pervasive dull mood, interested in all activities sleep, appetite, ideas of worthlessness, ideas of guilt, poor personal hygiene and grossly impaired social and occupational functioning in the absence of FRSS/ other psychotic Sx, manic Sx, or any evidence of substance use /organicity

13. In the light of the above discussed pleadings and evidence when the contentions raised by the learned counsel appearing for the appellant is examined, it would not detain this Court for too long to reject the same. Firstly, the order sheet of the trial Court would clearly indicate that though respondent appeared through counsel on 22.10.2007, for reasons best known did not file objections till 16.09.2008 and only on permission being granted by allowing I.A.No.3, objection was taken on record on 13.04.2012. By that time P.W.1 had already been examined on 04.04.2008. No permission was sought for to cross - examine P.W.1 nor application came to be filed seeking permission to cross examine.

14. When the matter was listed for cross-examination of P.W.1 on 23.11.2011 and 08.02.2013, he was absent and subsequently, he was present on 15.03.2013. The matter was called twice on the said date and there was no representation on behalf of appellant. Hence, trial Court has taken cross examination of P.W.1 as NIL and thereafter, no efforts has been made to seek for recall of P.W.1.

15. In view of witness summons having been issued to the NIMHANS, the Doctor from the said hospital appeared before the Court on 23.11.2013 and was examined as P.W.2 and on account of appellant and her counsel being absent the cross-examination of P.W.2 was taken as NIL and the evidence of respondent husband came to be closed and matter came to be listed for recording the evidence of appellant. Subsequently, between 06.12.2013 to 12.12.2013 arguments on behalf of respondent husband came to be heard and judgment came to be pronounced on 21.12.2013. Thus, it can be clearly noticed that opportunity to the appellant wife came to be extended by the trial Court at all stages and no effort was made by her either to seek recall of P.W.1 and P.W.2 and no reasons, whatsoever, has been assigned for not proceeding with the matter before the trial Court. Hence, contention raised in this regard cannot be entertained and it stands rejected.

16. Insofar as, the appreciation of the evidence undertaken by the trial Court to grant the relief in favour respondent husband cannot be found fault with either on the ground of erroneous appreciation or non appreciation, since it could be clearly seen that the burden that was cast on the husband to prove that appellant wife was suffering from mental illness even prior to the marriage, had stood proved by tendering the evidence of Doctor from NIMHANS, who had undisputedly examined her, treated her on various dates as was evident from the medical record Ex.C1.

17. A marriage solemnized between Hindus can be annulled by the decree of nullity on the grounds enumerated in Clause (a) to (d) of Sub-Section (1) of Section 12. In the instant case, the petition had been filed under Section 12(1)(b) seeking for nullity on the ground that the marriage solemnized on 24.09.2004 was in contravention of condition specified in Clause (ii) of Section 5 namely on the ground that at the time of the marriage appellant wife was incapable of giving valid

consent in consequence of unsoundness of mind, has been suffering from mental disorder to such an extent as to be unfit for marriage and procreation of children and also subjected to attacks of insanity. As already discussed hereinabove the evidence of Doctor P.W.2 would clearly indicate that appellant was suffering from insanity and same had also been recorded in the case sheet of NIMHANS as per Ex.C1. To rebut this medical evidence available on record, the appellant did not undertake to either cross-examine the Doctor P.W. 2 nor she produced any contra evidence in that regard. That apart she did not enter the witness box to substantiate her plea raised in the statement of objections filed by her. These facts cumulatively disclose that the respondent husband had proved that he was entitled for the marriage solemnized on 24.09.2004 between himself and the appellant is to be declared as nullity.

18. The evidence tendered by the respondent has been analyzed by the trial Court in proper perspective and there is no finding recorded either contrary to the evidence available on record or erroneously appreciating the available evidence. In that view of the matter, we are of the considered view that Point Nos.1 and 2 has to be answered in favour of respondent husband and against appellant wife.

RE. POINT No.3:

19. For the reasons aforesaid we are of the considered view that there is no merit in the contentions raised in this appeal and it deserves to be dismissed. Hence, the following:

ORDER

(1) Appeal is hereby dismissed.

(2) Judgment dated 21.12.2013 passed in M.C.No.39/2006 by the Sr. Civil Judge, Chikkaballapur, is hereby affirmed.

(3) No order as to costs.

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