

**P.J. Moore Vs. Valsa**

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**Court :** Kerala

**Decided On :** Sep-11-1991

**Reported in :** AIR1992Ker176; I(1992)DMC55

**Judge :** K.T. Thomas and; Chettur Sankaran Nair, JJ.

**Acts :** Divorce Act, 1896 - Sections 19; [Contract Act, 1872](#) - Sections 17

**Appeal No. :** M.F.A. No. 263 of 1991

**Appellant :** P.J. Moore

**Respondent :** Valsa

**Advocate for Def. :** S. Ananthasubramanyan, Adv.

**Advocate for Pet/Ap. :** P.K. Balasubramanyan, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Thomas, J.**

1. A widower, father of three children, married again, but the wife after twelve years of married life sought to have the marriage annulled on the ground that her consent was obtained by fraud. Learned single Judge declared the marriage null and void. The fraud alleged is this; Before the second marriage, appellant

(husband) had undergone vasectomy , but he did not disclose it to the respondent (wife). As she did not conceive for thirty months, she was anxious to know the reason. Appellant then divulged to her that he had undergone vasectomy before marriage. But he pacified her that he would undergo recanalisation. However, he later changed his mind and declined to undergo recanalisation. His excuse for this volte-face is that such a course is repugnant to Pentecostal faith to which he has subscribed on becoming a member of Assemblies of Church of God.

2. Though appellant contended that respondent was told about his vasectomy during marriage negotiation stage itself, learned single Judge found, on evidence, that it was not disclosed to her earlier. Further contention of the appellant that she too did not want to bear children as she had rheumatic heart conditions, was found against by the learned single Judge. We are not persuaded to disturb those findings on fact arrived at by the learned single Judge on appreciation of evidence, despite the efforts made by the learned counsel for the appellant to interfere with those findings. He therefore focussed on the legal question whether nondisclosure of the said fact would amount to fraud as understood in Section 19 of the Indian Divorce Act, 1896 (for short 'the Act').

3. Sri. P. K. Balasubramanyan, learned counsel for the appellant, developed his arguments thus : Section 19 of the Act which recognises jurisdiction of the High Court to make a decree on the ground that consent was obtained by fraud is to be strictly interpreted; the concept of fraud envisaged in the section is narrower than the word 'fraud' defined in Section 17 of the Contract Act; mere concealment of a fact, unless it relates to the identity of a spouse or the ceremony to be undergone, does not amount to fraud; hence nondisclosure of information regarding vasectomy is not fraud of such a nature as to vitiate the consent for marriage.

4. Under Section 17 of the Contract Act, active concealment of a fact with intent to induce another person to enter into a contract is enough to constitute fraud. In the Explanation to the section it is made clear that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud. This clarification is, however, subject to a rider that if circumstances are such that it is the duty of the person keeping silence to speak, then, even silence may amount to

fraud.

5. No doubt, the concept of fraud in the Contract Act is of wide amplitude. Fraud, in relation to matrimonial causes, cannot be understood as including concealment of every fact which relates to marriage. It has to be borne in mind that at the time of negotiation or courtship, parties would try to project themselves in the best possible form. Some amount of exaggeration in representation is often experienced to make him or her acceptable to the other as a spouse. Mere concealment or over-statement of facts by itself does not invalidate a marriage. Hence contours of concept of fraud as widely envisaged in the Contract Act cannot be imported hook line and sinker to matrimonial proceedings.

6. It has been held in different cases (*Harbajan Singh v. Brijbalap Kaur* AIR 1964 Punj 359 *Ranibala Debnath v. Ram Krishna Debnath* (1969) 73 Cal WN 751) that neither the girl nor her relatives are under any obligation to disclose about her prenuptial moral lapses. Similarly, misstatement or concealment regarding the fortune or family status of a spouse is no ground for annulment even though consent would have been procured by disingenuous representation. In one case, even concealment of wife's disease (epilepsy) was not regarded as fraud which affected consent of the husband vide *Reghunath Gopal v. Vijaya* AIR 1972 Bom 132.

7. The pristine view that scope of fraud in matrimonial law has a narrow radius need not rigidly be adhered to in modern times. The earlier view was attuned to the then prevailing legislative attitude. Grounds for dissolution were set forth in early marriage enactments with a great degree of rigour and strictness. Courts in interpreting such laws took care not to depart from the legislative policy or the philosophy involved in the statutes. But over the years legislature liberalised the grounds for dissolution and thereby opened wider vision and perspective. This change had corresponding effect on the courts as they adopted more pragmatic approach in construing the grounds for dissolution or annulment of marriage. In a way a more liberal outlook was adopted by the courts in recent years. This trend gained approval from the apex court in *Renold Rajamani v. Union of India* AIR 1982 SC 1261. R. S. Pathak, J. (as he then was) made the following observations

(at p. 1263 of AIR):

'The history of all matrimonial legislation will show that at the outset conservative attitudes influenced the grounds on which separation or divorce could be granted. Over the decades, a more liberal attitude has been adopted fostered by a recognition of the need for the individual happiness of the adult parties directly involved ..... It is another matter that in construing the language in which the grounds are incorporated the courts should give a liberal construction to it. Indeed, we think that the courts must give the fullest amplitude of meaning to such a provision. But it must be meaning which the language of the section is capable of holding'.

8. If non-disclosure relates to a fact which has a material impact on one the very purposes of nubile alliance that may amount to fraud which vitiates the consent expressly or impliedly given by one party for the marriage. The question then is, whether vasectomy is such a material fact as to taint the consent for marriage due to its non-disclosure.

9. Vasectomy is a mode of sterilization. It involves surgical ligation and excision of a portion of vas deferens at the neck of scrotum. A male who undergoes vasectomy becomes sterile and then incapable to impregnate a woman. This medical proposition stands undisputed.

10. One of the sublime objects of married life is to have offsprings. This is not merely a traditional view, but an established truth which transcends ages and has universal acceptance. Motherhood is one of the cravings of a normal woman. No authority need be cited to support this philosophy. Parties enter into marriage alliance on the assumption that they would become father and mother in due course of time. If a person became incapable of procreation through act of man such as a surgery, he is under a basic duty to disclose that fact to the other party who wishes to join him in the wed-lock. Nondisclosure of this vital information which goes to the root of married life amounts to fraud in matrimonial relationship. Consent, given by one spouse without knowledge of this basic defect in the other spouse, stands vitiated and tainted. It is open to the affected spouse to petition that his or her consent was wangled by fraud.

11. In *Squire v. Squire* (1948) 2 All ER 51 it was held that persistent refusal by wife to have children is infliction of cruelty on the husband. In *White v. White* (1948) 2 All ER 151 a husband consistently practised coitus interruptus in spite of his wife's repeated protestations and she developed some kind of nervous disposition and in spite of doctor's intercession to allow her to become pregnant he persisted in the same method. Willmen, J. held that it was cruelty on the part of the husband. In *Knott v. Knott* (1955) 2 All ER 305 it has been held that permanent starvation of maternal instinct may by itself be cruel. Lord Denning, L. J. (as he then was) observed in *Bravery v. Bravery* (1954) 3 All ER 59 (a decision which is very often quoted in subsequent decisions involving this subject) as follows: 'If the husband had undergone it (vasectomy) without telling his wife about it before-hand no one could doubt that it would be cruelty. It was an act most disruptive of the married state and she was the victim of it. Of course, all what Lord Denning L.J. observed in the decision were not shared by Evershed, M.R. and Hodson L.J., who constituted the bench in the Court of Appeal. The above decisions provide ample indications to understand that the courts in England have regarded negation of female spouse's innate desire to become a mother as a serious matrimonial delinquency on the part of male spouse. Courts in India have not taken a different view either.

12. A Full Bench of the Gauhati High Court in *Best Morning v. Mirmalendu* AIR 1987 Gau 63 affirmed the decree annulling the marriage on the identical ground. In that case, a widower, who too was the father of children in his first marriage, underwent vasectomy and without disclosing the fact married another lady. K. N. Saikia, C.J. (as he then was) observed that though concealment or deception by one of the parties in respect of traits or defects of character, habits, temper, reputation, bodily health and the like is not sufficient ground for avoiding a marriage, there is a difference if the husband concealed his vasectomy. It was found that the husband was guilty of fraud in wangling consent of the wife. This view is in accord with the approach made by the learned single Judge.

There is no reason to interfere and hence we dismiss the appeal.