

**V.C. Thomas Vs. an Thomas Alias Kunjumol**

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**Court :** Kerala

**Decided On :** Jul-16-1998

**Reported in :** II(1999)DMC636

**Judge :** K.S. Radhakrishnan and; S. Sankarasubban, JJ.

**Acts :** [Divorce Act, 1869](#) - Sections 19

**Appeal No. :** C.M. Ref. No. 158 of 1996

**Appellant :** V.C. Thomas

**Respondent :** An Thomas Alias Kunjumol

**Advocate for Def. :** George Poonthottam, Adv.

**Advocate for Pet/Ap. :** James Kurian, Adv.

**Judgement :**

**Radhakrishnan, J.**

1. This C.M. Reference arises out of OrderP. (Divorce) No. 86 of 1993 of District Court, Kottayam.

2. The petition was filed by the husband under Section 18 of the Indian Divorce Act to declare the marriage between the petitioner and respondent null and void, on the ground that the wife was 1 unatic at the time of marriage. Marriage between

the parties was solemnised at the St. Thomas Catholic Church, Kundiakel on 21-10-91. Respondent cohabited with petitioner only for 30 days and during the said period respondent had exhibited abnormal behaviour evidencing mental illness. Respondent was admitted in Mandiram Hospital on 27-12-91 and she was treated there for about 26 days by one Dr. Ajuh Thomas. Later she was taken to the Medical College Hospital, Kottayam and she was admitted there on 22-1 -92 and was discharged on 6-2-92. She was under treatment of one Dr. John Mathai. According to petitioner she had menial illness for about 1 1/2 years even prior to the date of marriage. He also claimed that respondent was impotent.

3. Notice was issued to the respondent by the Court below but she did not appear. Later application was filed for appointment of her father as guardian, for which notice was issued to him. He also did not appear. Subsequently Court appointed Smt. K. Bhagyam, Advocate as Court Guardian. She contacted the respondent and filed her objection stating that after marriage parties had lived together for 60 days and there was no mental illness to the respondent as alleged in the petition. It was stated that after the marriage, while petitioner and respondent were travelling on a scooter respondent happened to see a road accident and due to the said shock she became withdrawn and had to underwent some treatment in the Mandiram Hospital and later in the Medical College Hospital, Kotiyam. She denied the ground of impotency as well as unsoundness of mind.

4. Petitioner got himself examined as PW. 1 and a neighbour was examined as PW-2. Evidence given by Dr. P. John Mathai in connection with 1.A. 1472/95 relating to appointment of guardian was treated as evidence in the main case as well. There was no oral or documentary evidence on the side of the respondent. The Court below after considering the oral and documentary evidence rejected the ground of impotency but allowed the petition after finding that the respondent is a lunatic. Court below laid emphasis on the oral evidence of the doctor who treated the respondent in the Medical College, Kotiyam as well as the evidence given by the neighbour.

5. When the matter came up for hearing we appointed Sri A. J. Jose, Advocate as Court guardian. Court guardian met respondent at her residence on 30-5-98. Court

guardian states that there is no symptoms of mental disorder and she is capable of leading a normal life. She is taking care of her parents, cooking food and behaving properly.

6. We heard counsel for petitioner at length. Counsel for the petitioner contended that in the absence of oral or documentary evidence on the side of the respondent it must be presumed that the allegations raised by petitioner in petition for divorce stand proved. Much reliance was also placed on the evidence of Dr. John Mathai. We have gone through the oral evidence adduced by the petitioner as well as the evidence of Dr. John Mathai. Respondent was originally treated at Mandiram Hospital and later she was admitted to the Medical College, Kottayam on 22-1-92 and discharged on 6-2-92. Eventhough in the evidence of doctor it has been stated that the previous history of the patient was similar illness 1 1/2 years back, there is no documentary or oral evidence to establish that she had similar illness 1 1/2 years back. Doctor John Mathai has no case that he had treated the respondent before the marriage. Petitioner has not adduced any oral evidence or examined any doctors to show that respondent had mental illness prior to the date of the marriage. Even though a neighbour was examined to show that respondent has showed symptoms of mental illness at the time or marriage nobody from the Church or any other independent witness was examined to establish thesame.

7. In this case it is worthwhile to refer to the decision of the Supreme Court in Ram Narain v. Rameshwari, AIR 1988 SC 2260. The Supreme Court has stated as follows (at page 2264):

'The context in which the ideas of unsound-ness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree if the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.'

In the instant case even though petitioner as well as the doctor says that she was treated subsequent to the marriage at the Medical College Hospital on 22-1 -92

and discharged on 6-2-92 there is also no evidence whatsoever to show that she is suffering from mental illness, before or at the time of marriage. The evidence of the Court guardian also indicates that she is a normal person.

8. On the basis of the available materials we are not in a position to hold that the respondent is suffering from mental illness at the time or even before marriage. Counsel for the petitioner however submitted that since no objection was raised by respondent and that the respondent failed to appear before the Court an opportunity may be given to petitioner to adduce further evidence so as to establish that the respondent was suffering from mental illness at the time of marriage. We have noted from the evidence of Dr. John Mathai that the respondent was having previous history of similar illness 1 1/2 years back. In view of the said circumstances it is only just and proper that an opportunity be given to petitioner to adduce further evidence. In order to enable the petitioner to do so we are remitting this matter back to the District Court, Kottayam. It is open to the petitioner and respondent to adduce further evidence if they desire when the case is posted before the Court below.

This CM. Reference is disposed of as above. Order accordingly.

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