

Mathuram Augustine Vs. Vijayarani

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Court : Chennai

Decided On : Apr-03-1979

Reported in : AIR1980Mad1

Judge : Ramaprasada Rao, C.J., ;Varadarajan and ;Sethurama, JJ.

Acts : Divorce Act, 1969 - Sections 19 and 19(1)

Appeal No. : M.C. No. 18 of 1978

Appellant : Mathuram Augustine

Respondent : Vijayarani

Advocate for Def. : S. Balakrishnan and ;Amicus Curiae, Advs.

Advocate for Pet/Ap. : V. Raghupathy and ;T.R. Rajaraman, Advs.

Judgement :

Ramaprasada Rao, C.J.

1. This reference arises out of the judgment of the learned District Judge, Tirunelveli who decreed the suit for declaring the marriage of the plaintiff with the defendant as null and void under Section 18 of the Indian Divorce Act. The short facts are as follows. The spouses are Christians. The plaintiff married the defendant on 27-5-1976 at the, CM. S. Church at Nazareth, Tiruchendur taluk,, and the marriage is evidenced by Ex. A-I. The plaintiff appeared to have tried his

best to have sexual intercourse with the defendant which she refused consistently from the date of marriage. The burden of the song seems to be that in spite of persuasions, ever since the date of marriage, the marriage could not be consummated as the defendant never agreed to have sexual Intercourse with him. The plaintiff effected a change of place, of residence and took the, defendant to Sholinghur and treated her in the expectation that there would be a change in the attitude of the defendant. Even such attempts were of no avail. According to the plaintiff, the defendant has left him to live with her parents to live at Nazareth. The defendant did not appear in the court below. The plaintiff therefore alleges physical Impotency to the defendant and that she is incapable of having sexual intercourse with him both at the time of the suit and at the time of the marriage and Prayed for a declaration that the marriage between him and the defendant is null and void.

2. The defendant, in the first instance, filed a written statement admitting the marriage. She admitted that she refused to have sexual intercourse with the plaintiff during the first night, but would say that it was not due to any Impotency on her part, but because the overtures made by the plaintiff were violent and as she was tired she refused to have sexual intercourse with him She denied that she was sexually impotent. She further stated that there were many letters which passed between her and the plaintiff and that she did not send a reply to the notice sent by the plaintiff before the action. In the end, however, she denied that she is physically impotent. -In the actual proceedings, she remained ex parte.

3. During the course of the trial, an interlocutory application was filed by the plaintiff for a direction from the court to have the defendant examined medically about her physical condition and for a report whether she was capable of having sexual intercourse. The learned District Judge examined the spouses in court, the defendant, though expressed her willingness for a divorce she was not for an examination of her physical body by medical, experts and stated that she was not willing to submit herself to such medical examination by a doctor. Thereafter she did not examine herself

4. The plaintiff examined, himself and secured a letter from the Commissioner, Dr. Maragathavalli, M. D. D. G. O. appointed by the court for examining the defendant.

Dr. Maragathavalli's letter is addressed to the court P. W. I repeated what he stated in the petition and asserted in the box that the defendant did not have sexual intercourse with him on the nuptial bed and even at places like Tuticorin and Sholinghur to which places he took her for a change she did not have sexual intercourse with him and that for all the reasons, as stated by him and for the particular reason that she would not even reply to the notice prior to the action and for the greater reason that she refused to submit herself to medical examination even though an opportunity was given to her by the plaintiff he asked for a decree as prayed for by him.

5. We may add for the purpose of completion that Dr. Maragathavalli M. D. D. G. O who was appointed as Commissioner by the court wrote to the, court that the defendant did not submit for medical examination on the date fixed for the purpose. It is in these circumstances that the learned District judge came to the conclusion that the defendant was not willing to submit herself for sexual intercourse with the plaintiff and a special feature in this case, namely, her refusal to submit to a medical examination was an instance to come to the reasonable conclusion that she was physically impotent. He accepted the case of PW 1 that from the date of the marriage as between him and the defendant till date of the action, the marriage was not consummated. In the result he found that the plaintiff was entitled to a declaration that the marriage as between the plaintiff and the defendant is null and void and decreed the suit as prayed for subject, however, to confirmation by the High Court as required under law.

6. Learned counsel for the plaintiff supports the judgment and after bringing to our notice the necessary papers in the record seeks for confirmation. The defendant is represented by Mr. S. Balakrishnan, amicus curiae, who did not appear yesterday and he is not present in court today also. We have perused the records and after hearing the arguments of Mr. Raghupathi for the petitioner, we are satisfied that the decree passed the court below has to be sustained our reasons are as follows-

7. Matrimony, whether sacramental or contractual projects certain reciprocal obligations as between the spouses. One of the main obligations of a matrimonial tie is consummation. Consummation of a marriage which is demonstrated by

either parties having sexual intercourse with the other, is one of the necessary concomitants of matrimony or a matrimonial tie. If due to obduracy or obstinacy or otherwise on the part of either of the spouses the marriage is not consummated and one is not willing to have sexual intercourse with the other, if an opportunity is given after being accused by one of the spouses that the other spouse is physically impotent, if the accused spouse refuses to submit him or herself to medical examination so as to obtain an expert opinion about his or her physical condition and if the above facts are established in a given, case, then, courts are bound to draw reasonable inference from such obduracy on the part of the accused spouse not to submit to a medical examination and to have sexual intercourse with the seeking spouse that the marriage is a nullity, PW. 1, the plaintiff, says that he did not have sexual intercourse with the defendant even on the first night and at any time thereafter. Though in the written statement the defendant denied the allegations made by the plaintiff she did not get into the box nor did she challenge the testimony of PW. 1. in a manner known to law. There is yet another circumstance in this case which throws light upon the fact that physical impotency is apparent in the defendant. The plaintiff, even though the defendant was not physically present in the course of the proceedings, filed an interlocutory application seeking for permission of the court to have the defendant examined medically about her condition and her capability to have sexual intercourse with him. Dr. Maragathavalli, M. D. D. G. O. was appointed Commissioner. She fixed a date for examination of the defendant. The defendant did not turn up before Commissioner. She had to report to the court saying that on the date fixed, the defendant did not turn up for medical examination and the. defendant also would say that she was not prepared to submit herself to medical examination and also wrote to the Commissioner to the same effect These factors undoubtedly establish the contention of the plaintiff that the physical condition of the defendant was such that she was incapable of having sexual inter course with him and that she was unwilling to have carnal copulation with him.

8. In an earlier Full Bench decision of our court in Jayaraj Anthony v. Mari Seeni Ammal, : AIR1970 Mad103 , the learned Judges observed to the same effect as we said earlier and opined as follows-

'In a husband's petition for declaration of a nullity of marriage, on the ground of wife's impotency, the wife's impotency, the consistent refusal to consummate the marriage and also her refusal to submit herself to medical examination are strong circumstances from which a legitimate inference of her impotency at the time of the marriage and also at the time institution of the proceedings against her within the meaning of Section 19(1) of the Divorcee Act, can be drawn.'

9. In that case, a reference was made to the passage in the well-known book 'Reydon an Divorce' who stated that where a woman is shown not to have had intercourse with her husband after a reasonable time for consummation of the marriage and it appears that she has refused intercourse and resisted her husband's attempts, the court, if satisfied that the refusal was not due to mere obstinacy or caprice, may draw the inference that it arose from some incapacity proceeding from nervousness or hysteria or from an invincible repugnance to the act of consummation resulting in a paralysis of the will which was consistent only with the incapacity. As we observed in the beginning, one of the necessary concomitants of a marriage is consummation. Obstinacy or obduracy on the part of one of the spouses not to consummate the marriage in the manner stated above in the course of our judgment leads to the reasonable inference that the defendant was physically impotent.

10. We accept the finding of the learned District Judge and the result is that we confirm the decree for a declaration that the marriage between the plaintiff and the defendant is null and void.

11. Decree confirmed.