

L. Hemalatha Vs. N.P. Jayakumar

L. Hemalatha Vs. N.P. Jayakumar

SooperKanoon Citation : sooperkanoon.com/836769

Court : Chennai

Decided On : Jan-24-2007

Reported in : AIR2008Mad98

Judge : P.D. Dinakaran and ;Chitra Venkataraman, JJ.

Acts : [Family Courts Act, 1984](#) - Sections 10; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 32, Rules 1 to 14 and 15

Appeal No. : C.M.A. No. 472 of 2002

Appellant : L. Hemalatha

Respondent : N.P. Jayakumar

Advocate for Def. : Nalini Chidambaram, S.C. for N.S. Varadachari, Adv.

Advocate for Pet/Ap. : A.N. Loganathan, Adv.

Disposition : Appeal allowed

Judgement :

P.D. Dinakaran, J.

1 The above appeal is directed against the order dated 3.1.2002 passed in F.C.O. P. No. 40 of 1999 on the file of II Additional Principal Judge, Family Court, Chennai, annulling the marriage between the petitioner and the respondent that

took place on 2.2.1998 on the ground that the respondent wife has been subjected to recurrent attacks of insanity, the consent of the petitioner husband for marriage was obtained by fraud and the respondent wife was pregnant at the time of marriage through some other person.

2. Facts, in nutshell, are as follows:

2.1. The marriage of the petitioner husband with the respondent wife, which was an arranged one, was solemnized on 2.2.1998 at Hotel Kanchi, Chennai, according to Hindu rites and customs. It is alleged in the petition filed by the petitioner husband that even during nuptials, which was arranged in the house of the respondent wife, she was restless and she took some tablets and after some time, she was drowsy and immediately went to bed. It is also alleged that the marriage is not consummated.

2.2. It is the case of petitioner husband that the respondent wife was taken to the doctors, who treated her for mental illness and Dr. Mathrubootham, a psychiatrist, advised that she should be treated by a psychiatrist constantly.

2.3. It is further alleged that one night, the respondent/wife woke up and shouted that 'Salim, I am pregnant, my baby is dead and I have suffered abortion. I am having stomach pain and I don't like this (mangalyam),' and then, she removed the thali and threw it away. It is stated that in a temple called 'Sri Angalaparameswari Temple', the respondent/wife claiming that she is Angala Parameswari, shook her head vigorously and started to distribute pongal without minding the heat of it.

2.4. It is stated that the consent of the petitioner/husband for marriage with the respondent/wife was obtained by fraud suppressing fact that she is suffering from unsoundness of mind. Hence, the petitioner/husband filed the petition to declare the marriage between them as a nullity, null and void ab initio.

3.1. The respondent/wife denied all the allegations by filing a counter-affidavit stating that she is fully capable of filing a counter and she need not be represented by her father as stated in the petition.

3.2. It is her case that only at the insistence of the petitioner/husband she was taken to the doctor who gave her mild sedative and later, declared her to be fit and well.

3.3. She has stated that she went to Sri Angalaparameswari Temple only to offer prayers. Both the petitioner and the respondent went together to Tamil movies and they also attended functions and visited their friends and thus, she behaved as a dutiful life.

3.4. She has further stated that the petitioner's family was only concentrating on the jewellery she brought and the petitioner's aunt used to scold her saying that she is sleeping all the time, but she tolerated everything with equanimity and gave respect to her in-laws. Because she was' cherished and well cared by her parents, the harsh treatment by her husband and in-laws only increased her nervousness. She claimed that the petitioner/husband insisted to admit her in the hospital for observation by Dr. Mathrubootham, but the doctor did not do so and in fact, the doctor counselled with the petitioner/husband to accept and treat her kindly.

3.5. She denied the allegation of illicit relationship with another person and the pregnancy before marriage. She has stated that she never, before and after marriage, suffered from unsoundness of mind and that there was no suppression of anything by her or by her parents.

3.6. On the side of petitioner husband, four witnesses were examined and seven documents were marked. On the side of respondent wife, three witnesses were examined, but no documents were marked. The psychological report issued by the Institute of mental health, Chennai was marked as Ex. C-1.

4. On the basis of evidence on record, the Family Court granted the decree as prayed for, and annulled the marriage that took place between the petitioner and the respondent, which is being challenged in this appeal by the respondent wife.

5. The point for determination is,

whether the petitioner husband is entitled to a decree declaring his marriage with the respondent wife as a nullity?

Heard learned Counsel appearing for both the sides and perused the records.

6. Admittedly, the marriage between the petitioner husband and the respondent wife took place on 2.2.1998 at Chennai. It is an arranged marriage. The petitioner is an advocate and the respondent is a graduate. The petitioner sought to declare the marriage as null and void on the ground that (i) his consent was obtained by fraud; (ii) the respondent wife is an insane, and (iii) the respondent was pregnant at the time of marriage through a third party.

7. The first and foremost attack of the petitioner husband is that the respondent wife is an insane and because of her attitude, the marriage remains unconsummated. According to the petitioner, even during nuptials, the respondent wife was found drowsy and she went to sleep and when asked, she shouted at him. According to him, the respondent wife was pregnant at the time of marriage and his consent for marriage was obtained suppressing the material facts. The petitioner narrated several instances to establish that the respondent wife is mentally unsound. On the other hand, the respondent wife denied each and every allegation. According to her, she is normal and she is not insane and the marriage was consummated.

8. Regarding non-consummation of marriage, the trial Court, relying on the evidence of petitioner husband (P.W. 1) came to the conclusion that the marriage was not consummated. The trial Court arrived at the above conclusion on the basis of evidence let in on the side of the petitioner that the respondent wife was insane and because of her attitude, the marriage was not consummated. Though the evidence of the petitioner husband proceeds to show that the respondent wife is insane and hence, the marriage remains unconsummated, the evidence of respondent wife (R.W. 1) is that she is normal and the marriage was consummated.

9. It is true that what happened within the four walls with closed doors is known only to the petitioner husband and the respondent wife, but, when an allegation of unsound mind is made, the same can be substantiated by letting evidence of other inmates. In this case, on the side of petitioner husband, apart from the petitioner, his father (P.W. 2), his aunt Ellammal (P.W. 3) and an independent witness

Manivannan (P.W. 4) were examined. All the witnesses spoke about several instances to project the respondent wife as insane. However, P.W. 2 in his cross examination has admitted that he did not notice anything strange in the attitude of the respondent wife when they all went to purchase saree for engagement. P.W. 4, an independent-witness, has also stated that he was informed by the father of petitioner of the alleged attitude of respondent, but he had no personal knowledge of the same.

On the other hand, the respondent wife, in her evidence, strongly denied the allegations levelled against her. According to her, the marriage was consummated. She has stated that she went to hospital accompanying her sister-in-law and at that time, scan was taken for herself.

10. Both the petitioner husband and the respondent wife stick at their respective stands and hence, the activities of the wife have to be looked into to draw inference as to her mental illness. From the averments, it is clear that betrothal for the marriage between the petitioner and the respondent took place on 6.10.1997 about four months prior to the date of marriage, viz., 2.2.1998. It is not the case of the petitioner husband that the respondent wife was found abnormal during the interregnum period. Further, the evidence of P.W. 2, father of the petitioner is that he did not notice anything strange in the activities of the respondent wife when he had been with her at the time of purchasing saree for betrothal.

11. Admittedly, the marriage between the petitioner and the respondent is an arranged one and in such case, the petitioner would have enquired about the respondent and her family. Even P.W. 4 who has spoken that the alliance was arranged by his friends one Kumar and A.V. Balasubramanian, has not stated that the respondent had suffered from mental illness prior to the marriage.

That apart, at the time of hearing, we had an occasion to see the demeanour of the respondent wife and in our opinion, she is found to be normal as she understood and answered the questions properly.

12. Merely because there are allegations and counter allegations the marriage between the parties cannot be dissolved and there must be real and extraordinary

features warranting grant of such decree on the basis of pleadings. Though the petitioner husband, in his evidence, reiterated the allegations made against the respondent wife, the Court must adopt pragmatic approach. The Court should keep in mind the ground realities and what is important is to decide whether the marriage can be saved and the husband and the wife can live together. Therefore, considering the evidence available on record as a whole, we are of the view that the trial Court is not correct in coming to the conclusion that the respondent wife is mentally unsound.

13. For the above view, support can be had from Ex. C-1, report given by the Assistant Professor of Psychiatry, Institute of Mental Health, Chennai. The respondent wife was subjected to medical check up at the instance of the trial Court and Ex. C-1 report shows that the respondent wife is conscious, ambulant and is in touch with the surroundings. But, the trial Court rejected the report Ex. C-1 on the ground that the mental condition of the respondent wife just prior to the marriage and at the time of marriage and just after the marriage should only be taken into consideration. The reason that weighed the trial Court, in our considered opinion, is not acceptable, as, it is settled law that to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.

14. Concededly, as deduced from the evidence the respondent wife was abnormal for some time at the time of marriage and she was taken to doctor for the same. Exs. P 2 to P-7 support the same. The respondent wife in her evidence has stated that she was taken to Hema Clinic and Dr. Mathrubootham also attended on her. According to her, she was given treatment for depression. The petitioner as P.W. 1 has admitted, that treatment was given to the respondent by Dr. Mathrubootham, a psychiatrist. P.W. 2, father of the petitioner has deposed that Dr. Mathrubootham did not keep the Respondent as in patient. R.W. 2, mother of the respondent, in her evidence has stated that the respondent was taken to hospital and the doctor gave medicine informing that the respondent was suffering from tension due to marriage. R.W. 2 has also stated that Dr. Mathrubootham also gave medicine to her daughter.

15. A perusal of Ex. C-1 also shows that the psychiatrist who attended on the respondent, based on the history, had the impression that the respondent had a short spell of psychiatric disturbance during ' February, 1998 immediately after her marriage and at present, she is not suffering from any abnormality of mind, based on the investigation and mental status examination during observation from 2.7.2001 to 20.7.2001.

16. It is trite law that for the purpose of grant of a decree of divorce, the petitioner must establish that unsoundness of mind of the respondent is incurable or his/her mental disorder is of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with his/her spouse. Medical testimony for arriving at such a finding although may not be imperative, but undoubtedly would be of considerable assistance to the Court. However, such medical testimony being the evidence of experts would not leave the court from the obligation of satisfying itself on the point in issue beyond reasonable doubt. Relevance of a medical evidence, therefore, cannot be disputed. vide: Sharda v. Dharmpal : [2003]3SCR106 .

17. The trial Court, however, granted the decree as prayed for rejecting the report, Ex. C-1, which, in our view, is not correct as it is clear from Ex. C-1 report that the respondent wife had only psychiatric disturbance immediately after the marriage, which, of, course, would not constitute a basis for granting a decree as prayed for.

18.1. Furthermore, before accepting the case of the petitioner husband that the respondent wife is suffering from mental disorder, the trial Court, in view of Section 10 of the [Family Courts Act, 1984](#), should have taken recourse to the procedure available under Order 32 Rule 15 of the Code of Civil Procedure. The above provisions which are relevant are as under:

Section 10 of the Family Courts Act 1984:

10. Procedure generally- (1) subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the

Code, or Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court. Order 32, Rule 15, Code of Civil Procedure: 15. Rules 1 to 14 (except Rule 2A) to apply to persons of unsound mind: Rules 1 to 14 (except Rule 2A) shall, so far as may be, apply to persons adjudged before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

18.2. Order 32, Rules 1 to 14, except Rule 2A, shall apply to persons of unsound mind. Order 32 Rule 3 contemplates filing of an application for the appointment of guardian where the respondent is alleged to be a person of unsound mind. Order 32 Rule 15 of the Code of Civil Procedure extends the application of Order 32 Rules 1 to 14, except Rule 2A, to the persons adjudged before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable by reasons of any mental infirmity, of protecting their interest when suing or being sued.

18.3. The expression, 'persons who, though not so adjudged, are found by the court on enquiry to be incapable by reason of any mental infirmity of protecting their interest when suing or being sued' found in Order 32 Rule 15 of the Code of Civil Procedure makes it clear that a duty is cast on the court to arrive at the finding whether on the pleadings or even in the absence of any pleading, when it is brought to the notice of the Court by the evidence on record whether any person is found by the Court, on enquiry to be incapable of protecting his or her interest, when suing or being sued and such duty, in our considered opinion, is mandatory and not discretionary. Any deviation from the above rule would render Order 32 Rule 1 to 14 of the Code of Civil Procedure redundant, inasmuch as the Court is expected to be a guardian of interest of the minors and persons of unsound mind who are incapable of protecting their interest. Therefore, the duty cast on the Court is to consider whether the respondent is in a position to act independently or not and whether the appointment of a guardian is necessary or not, and render necessary finding.

18.4. In the instant case, the petitioner husband, having alleged that the respondent wife is a person of unsound mind, ought to have filed an application for appointment of guardian, because even on his own pleadings, the respondent wife, being a person of unsound mind, could not defend herself.

18.5. The trial Court ought to have satisfied itself whether the respondent wife is a person of unsound mind or not. If the trial Court on the basis of materials placed before it, finds that the allegations of the petitioner husband are not sustainable, there is no need to appoint a guardian to defend the respondent wife. On the other hand, if it is satisfied that the respondent wife is a person of unsound mind, it should appoint a guardian to defend her. Such duty has not been discharged by the trial Court in the instant case.

18.6. The primary duty of a court is to see that truth is arrived at. But, the trial Court has simply accepted the case of the petitioner husband without insisting on an application under Order 32 Rule 15 of the Code of Civil Procedure. The failure on the part of the petitioner husband and the lapse on the trial Court to discharge the mandatory obligation as contemplated under Order 32 Rule 15 of the Code of Civil Procedure read with Section 10 of the Family Courts Act would render the order as a whole nullity in the eye of law.

19. However, the evidence on records makes it clear that the respondent wife was normal before the marriage and even after the marriage, but during the marriage time, she had a short spell of psychiatric disturbance. The trial Court ought to have taken note of the evidence of the respondent wife that the inmates of the petitioner husband ill-treated her. Apart from that, when the imputation against the character of the respondent wife is alleged by the petitioner husband, such baseless allegation of illicit relationship would lead to mental depression of the respondent wife. Therefore, even on merits, we do not have any hesitation to hold that the respondent wife is not a person of unsound mind.

20. The court dealing with the petition for divorce or dissolution of marriage has to bear in mind that the problems before it are those of human beings and the court should weigh the gravity of the allegations made by the parties against each other. The court must bear in mind that every matrimonial conduct which may cause

annoyance to the other may amount to a ground for divorce. Equally, the mere trivial irritation quarrels between spouses which happen in day-to-day married life, may also not amount to a ground for divorce. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. Too technical and hypersensitive approach would be counterproductive to the institution of marriage.

21. The trial Court, however, placing reliance only on the evidence adduced by the petitioner, came to the conclusion that the respondent wife was suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage, which is, in our considered opinion, not only incorrect, but also suffers from procedural irregularity, because the trial Court has not appreciated the evidence in a proper perspective manner.

22. The trial Court is also misdirected in rendering a finding that the consent of the petitioner husband was obtained by fraud as the marriage between the petitioner and the respondent was an arranged one and the family members of both the parties had meetings during the period in between the betrothal and the marriage. Further, in view of our above finding, it is not necessary to go into the allegation that the respondent wife was pregnant at the time of marriage as there is no other evidence except the evidence of the petitioner in support of the same.

23. Learned senior Counsel for the petitioner husband, relying on the decisions of the Apex Court in (i) *Durga Prasanna Tripathy v. Arundhati Tripathy* : AIR 2005 SC3297 , (ii) *Vinita Saxena v. Panjaj Pandit* 2006 2 L.W. 419, (iii) *Naveen Kohli v. Neelu Kohli* 2006 2 L.W. 606 and (iv) *Sujata Uday Patil v. Uday Madhukar Patil* 2007 (1) CTC 266, contends that the relationship between the petitioner and the respondent has been damaged beyond redemption and the marriage is irretrievably broken and the trial Court is justified in granting decree for divorce. However, we are unable to accept the above contention, as irretrievable break down of the marriage is not a ground by itself vide: *V. Bhagat v. P. Bhagat* : AIR 1994 SC710 .

24. Further, though divorce was granted in all the above decisions relied on by the learned senior Counsel for the petitioner husband, the ground raised in those cases was cruelty, and the Apex Court, considering the overall circumstances, held that the relationship between the husband and the wife got damaged beyond redemption. But, in the instant case, the circumstances are different as it is seen from the evidence that the respondent wife is not mentally unsound as claimed by the petitioner husband, and we have found that the evidence adduced has not been properly appreciated by the trial Court and that the trial Court is not correct in coming to the conclusion that the marriage was not consummated and the respondent wife was suffering from mental disorder and the consent of the husband was obtained fraudulently. Hence, we are not dealing with the decisions relied on in this regard.

25. In view of our above discussion, we hold that the trial Court is not correct in granting the decree of dissolution of marriage between the petitioner and the respondent, on facts and in law.

In fine, the appeal stands allowed setting aside the decree of the trial Court. No costs.