

Avinash Gurjar Vs. Aarti Gurjar

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Court : Chhattisgarh

Decided On : Nov-16-2011

Judge : I. M. Quddusi & G. Minhajuddin

Appeal No. : F A M No 40 of 2011

Appellant : Avinash Gurjar

Respondent : Aarti Gurjar

Judgement :

Oral Order

(APPEAL UNDER SECTION 19 OF THE FAMILY COURTS ACT, 1984)

I.M. QUDDUSI, J,

1. This appeal has been filed against the judgment and decree dated 18.3.2011 passed by the Family Court, Bilaspur in Civil Suit No.140-A/2009 which was filed u/s 11 read with section 13 of the Hindu Marriage Act for declaration of the marriage performed between the appellant and respondent as nullity on the ground that the respondent wife was mentally ill and suffering from mental disorder.

2. During the pendency of this appeal, the respondent was sent for medical check up and for obtaining report from Jawaharlal Nehru and Research Center, Bhilai

and a report was received regarding examination of the respondent by Dr. A. K. Biswas, Head of the Department of Psychiatry vide medical opinion dated 26.08.2011. The following was the opinion which is reproduced as under:

"Patient directed from High Court, Bilaspur, for psychiatric evaluation vide Direction No. F.A.M.No. 40/2011. Historical information from accompanying persons viz., sister Smt. Alka Pawar and brother-in-law Shri C.K. Pawar:

"Patient referred from there for psychiatric evaluation, upon allegations from her husband that she is mentally ill. The reasons of the allegations could not be elaborated upon lay them.

She was earlier treated in August 2009 at Apollo Hospital, Bilaspur and Dr. P.N. Shukla's Hospital, Raipur.

She had developed fever following which she received some medicines by her husband following which she started talking excessively, excessive eating, excessive spending; they approach no violence.

She recovered after about 20 days and has been normal ever since. She is off any medications ever since

no records or documents available."

Additional information from patient:-

"Patient is not taking medicines for about 6 months, but goes to Dr. P.N.Shukla for interim check up.

Patient gains retrospective account that she was having sleep disturbance; and that others felt she was talking excessively but she felt she was normal.

No significant FH and personal History."

O/E -Well Kumps (words not clear), Adequate personal care.

- PMA, RT normal -

No cognitive deficits.

Don't (not clear) reveal active psychopathology

(through stream form and content normal)

Mood : Fair - appropriate affect

Demis Halucinatory expenses

Partial image - "Signs I had only sleep disturbance" but I cannot say whether I am a mental Pc"

Note:- Information of history inadequate, unsupported by documents and not well reliable.

Opinion:

1) In view of the history, patient holds one of her two provisional diagnosis -

a) Acute mania due to general Medical Condition.

b) Delirium

2) At present she is found to be normal on mental status examination

3) Treatment for the same is available.

4) Upon treatment disease is curable, but a relapse is possible

Sd/- x x x x x

Dr. A. K. Biswas,

Head, Deptt. Of Psychiatry

3. An objection has been filed by the appellant to the above medical opinion that the Medical Officer namely Dr. Biswas who examined the respondent had no knowledge about the past history of the respondent regarding her mental illness.

The opinion has been quoted above, according to which, it has been observed that She was earlier treated in August 2009 at Apollo Hospital, Bilaspur and Dr. P.N. Shukla's Hospital, Raipur. Any how, we feel that it was necessary to give opportunity of cross examination to the appellant also. The medical report was liable to be proved by summoning Dr. Biswas.

4. Further we have found that section 11 of the Hindu Marriage Act, 1955 (for short "Act, 1955) deals with void marriages. It provides that any marriage solemnized after commencement of this Act shall be null and void and may, on petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

5. Section 5 of the Act is also relevant here and quoted below:

"5. Conditions for a Hindu marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity.

(iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless he custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;"

A bare reading of the above provisions shows that the grounds 'mental illness' or of 'unsound mind' have not been mentioned in Section 5. However, in section 13(1)(iii) it has been mentioned that any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind expected to live with the respondent.

6. In view of the above position, under Section 11 a marriage cannot be declared a nullity on the ground mentioned in section 5(2)(b) i.e., at the time of marriage, neither party though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. However, under the provisions of section 13(1)(iii) of the Act, the petition for divorce would be maintainable. Therefore, we are of the opinion that the matter requires reconsideration at the end of learned Family Court in view of the fresh opinion obtained by this Court, as quoted above.

7. In view of the above we allow this appeal in part, set aside the impugned decree and remit the matter back to the family court for decision afresh.

8. Needless to mention that the parties shall be allowed to amend the pleadings, adduce further evidence, file documents or get the documents verified etc., and thereafter the decision shall be taken afresh at the earliest.

9. The records of the Tribunal shall be sent back without further delay. The medical report in original shall also be sent alongwith the lower court record and on the record of the appeal, a Xerox copy of the said report shall be kept.

10. The parties shall appear before the Family Court concerned on 05th of December, 2011.

11. It is expected that the matter shall be decided as expeditiously as possible preferably within a period of 3 months from the date of appearance of the parties.

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