
(2016) 01 KL CK 0083
In the High Court Of Kerala
Case No : Mat. A. No. 43 of 2013

Beena S.S.

APPELLANT

Vs

Sundaresan and Others

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia)

Citation : (2016) 2 HLR 267 : (2016) 1 KerLJ 468 : (2016) 1 KHC 355 : (2016) 1 KLT 546

Hon'ble Judges : C.K. Abdul Rehman and S.P. Chaly, JJ.

Bench : Division Bench

Advocate : Basant Balaji, for the Appellant; Shammi Vijayan and K.P. Santhi, for the Respondent

Final Decision : Allowed

Judgement

S.P. Chaly, J.—1. The above appeal is filed by the Respondent against the judgment of the Family Court, Nedumangad in OP No. 574 of 2008 dated 26/09/2012, whereby the Family Court allowed the Original Petition filed by the 1st Respondent herein, seeking dissolution of the marriage on the ground of cruelty. During the pendency of this appeal, 1st Respondent died and consequently additional Respondents 2 to 4 were impleaded by this Court as per its order dated 15/01/2015 and in spite of service of notice, none appeared either personally or through counsel to contest the proceedings. Brief facts required for the disposal of the appeal discernible from the Original Petition are as follows:

2. The appellant and the 1st Respondent are Hindus and their marriage was solemnized as per the custom, rituals and ceremonies prevailing in the community on 30/08/2002 at Nirmala Kalyana Mandapam, Kazhakoottam. Thereafter, they resided in the house of the 1st Respondent. According to the 1st respondent, at the time of marriage, the appellant was provided with 35 sovereigns of gold ornaments and Rs. 50,000/- was given to the 1st Respondent

as pocket money, by way of a cheque. The 1st Respondent spent the money for marital expenses and he gave a Thali Chain" to the appellant weighing 3 1/2 sovereigns and he gave a silk saree worth Rs. 7,000/- on the day of marriage to the appellant. The entire gold ornaments belonging to the appellant were in her custody and 1st Respondent had never any opportunity to handle them.

3. It is further contended by the Respondent that after the marriage, the appellant was taken to the family house of the 1st Respondent and they started to live as husband and wife. The marital life was not at all happy or a contented one. The appellant started quarrel from the first day of the marriage itself. There was a marriage party at the residence of the 1st Respondent on the date of marriage and the friends and relatives of the 1st Respondent attended the party in the evening. They were all eager to mingle with the appellant, but the appellant stood idle and she behaved like a stranger as if to appear that she was against the party going on there. This kind of behaviour from the part of the appellant gave much mental pain to the 1st Respondent and during the same night when all the visitors left the place, the 1st Respondent when asked about the unmindful attitude of the appellant, the appellant with utmost irritation replied that the 1st Respondent is unnecessarily spending money for conducting party instead of buying a good Thali Chain" or saree for the appellant and this reply given by the appellant gave much mental pain and tension to the 1st Respondent.

4. It is the further contention of the 1st Respondent that through out the marital life, the appellant used to quarrel with the 1st Respondent stating that the "Thali chain" put by the 1st Respondent was not up to the mark and the saree bought by him was very bad. The appellant never showed any kind of love and affection towards the 1st Respondent and she did everything like a machine and element of love was lacking in her approach and behaviour. Even though the 1st Respondent provided everything to the appellant as a dutiful husband, she behaved rudely and vehemently and she was inimical towards the 1st Respondent for reasons best known to her. It is also the contention of the 1st Respondent that the appellant used to quarrel with the 1st Respondent stating that the family house of the 1st Respondent is a den and there is not even electricity connection to use mixie, grinder, electric iron etc. and further that there is no gas connection and other modern equipments for a decent life. It is the case of the 1st Respondent that being a lower grade servant in the Government service, he was not able to provide all those facilities at a stretch. Even though the 1st Respondent tried to make the appellant understand his inability to provide those modern facilities, the appellant instead of realizing the truth, used to abuse the 1st Respondent during night and on most of the days the appellant had not allowed the 1st Respondent to sleep peacefully. In spite of the request of the 1st Respondent to allow him to sleep, the appellant used to abuse him using utmost filthy language. Because of the continuous harassment on the part of the appellant, the 1st Respondent could not concentrate in his work and this resulted in receiving negative and adverse comments from his

Superior Officers and the same caused tension and grief to the 1st Respondent.

5. The appellant also abused the 1st Respondent by always saying that he is not receiving even half of the salary that is received by the father of the appellant as pension and such statements always caused much worry and developed inferiority complex in the 1st Respondent. It is also the case of the 1st Respondent that he took care of the appellant and the child born to them. But, in spite of utmost care, love and affection extended by the 1st Respondent, the appellant always showed some kind of detachment to the 1st Respondent. It is also the case of the 1st Respondent that on the 3rd month of the delivery on 27/02/2005, the 1st Respondent along with his relatives went to the house of the appellant to take her back with the child to the matrimonial home and then the appellant in the presence of close relatives of the 1st Respondent abused the 1st Respondent and she declined to go along with the 1st Respondent to the matrimonial home. That apart, the appellant insisted the 1st Respondent to stay at her house, if he is interested in continuing the marital relationship and according to the 1st Respondent, the said incident diminished the status of the 1st Respondent among his relatives, which also gave much mental tension to him. It is also contended by the 1st Respondent that the appellant has agreed to proceed to the matrimonial home after much persuasion by the relatives.

6. It is alleged by the 1st Respondent that in spite of the care, love and affection extended by the 1st Respondent to the appellant and the child, the appellant did not bother to take care of the 1st Respondent and the appellant also did not take care to provide proper food and she was hesitant and refused to wash the clothes of the 1st Respondent. Even though the 1st Respondent made his best efforts to make the appellant happy even by discussing the family problems with the appellant and her parents, the appellant did not make any heed to the request of the 1st Respondent. While so, during the year 2006, the appellant again became pregnant and she gave birth to a male child on 14/11/2006 and the entire expenses in connection with the delivery was spent by the 1st Respondent. It is also contended by the 1st Respondent that during his visit to the hospital, the appellant abused him by shouting at him in the presence of the mother of the appellant and other in-patients of the hospital, that the child is not belonging to him and it belongs to someone else and further that he was a trans-gender and he has no right to question the appellant. This caused much shock to the 1st Respondent and he felt severe chest pain. The bystanders of other patients came to the scene and they all scolded the appellant for harassing the 1st Respondent so badly.

7. It is also the case of the 1st Respondent that after the third month of delivery, the appellant and the second child was taken to the matrimonial home, but the cruel treatment of the appellant by quarreling with the 1st Respondent continued frequently. It is also the case of the 1st Respondent that he was a diabetic patient and he had to undergo treatment in the General Hospital, Thiruvananthapuram and at that point of time, the appellant did not take care of

him. Again he was admitted to the Medical College Hospital, Thiruvananthapuram, due to heart ailment and then also the appellant and her relatives did not take care of the 1st Respondent. After the recovery from a stroke suffered by the 1st Respondent, his physical condition became very weak, which resulted in discontinuance of physical relationship with the appellant and it has caused much tension in the family life and the appellant started commenting about the same very cruelly and she always said that she does not want to live with a physically weak person and that if the 1st Respondent died, her life could have been saved, and this type of comments created much distress to the 1st Respondent. It is also the contention of the 1st Respondent that on 12/10/2007, the appellant left the matrimonial home stating that she does not want to reside like a puppet and she does not want to spoil her life living with the 1st Respondent. Even though the 1st Respondent tried his best to pacify the situation and bring back the appellant from the house of the appellant, she did not care to have a re-union and also refused access to the children.

8. It is further contended that, on 10/05/2008, the 1st Respondent along with his sister and children visited the family house of the appellant and they in fact took toys and several other articles for the children, the appellant and her parents did not allow the 1st Respondent to see the children and they were not ready to receive the articles taken by the 1st Respondent for the children. Even though the 1st Respondent tried to enter the room, his father-in-law manhandled him in front of his sister and children and they threw away the articles taken by the 1st Respondent for his children. The appellant was watching all the incidents and instead of pacifying the situation, instigated them to manhandle the 1st Respondent. By making such allegations, 1st Respondent contended that the situation being so, the 1st Respondent apprehended danger to his life and limb, if he resides any further with the appellant and it was under such circumstances, on the ground of cruelty, the 1st Respondent sought dissolution of the marriage.

9. The appellant has filed written statement refuting the allegations made by the Respondent. It was contended by the appellant that the entire allegations made by the 1st Respondent have no basis at all. It is also contended by the appellant that the attempt of the 1st Respondent is with the intention of not returning the gold ornaments and the money paid by her father to the 1st Respondent. It is also contended by the appellant that the 1st Respondent always exhibited suspicion over the appellant and made accusation challenging her chastity. It is also contended that the 1st Respondent always state in front of others that the second child is not belonging to him. It is also contended by the appellant that she has taken utmost care and provided love and affection to the 1st Respondent and it is due to the mental disorder exhibited by the 1st Respondent that the marital life of the appellant and the 1st Respondent could not be carried on smoothly and successfully. It is also stated that the appellant was agreeable to live with the 1st Respondent. Therefore, the appellant contended that there was no cause of action for the 1st Respondent to file the Original Petition for the dissolution of the marriage.

10. The 1st Respondent examined himself as PW 1 and a close relative of the 1st Respondent was examined as PW 2. The appellant was examined as RW1. The Family Court, taking into account the contentions raised by the parties, framed one material point for consideration "as to whether the 1st Respondent is entitled to get divorce on grounds of cruelty". The Family Court, after evaluating the facts and circumstances of the case and without much discussion on the evidence adduced by the parties had arrived at a conclusion that the life of the appellant and the 1st Respondent was not cordial and both had treated each other cruelly and the acts of the appellant and the 1st Respondent had caused much mental pain to both. So, the 1st Respondent has clearly established cruel treatment of his wife mentally, before the Court and therefore the 1st Respondent was entitled to get his marriage with the appellant dissolved under Section 13(1)(ia) of the Hindu Marriage Act and accordingly the same was dissolved.

11. Heard learned counsel for the appellant and since none appeared for the additional Respondents, we did not have the advantage of hearing them.

12. The thrust of the contention advanced by the learned counsel for the appellant is that the Family Court has ordered dissolution of marriage without any evidence to substantiate any mental cruelty inflicted by the appellant against the 1st Respondent. It is also contended by the learned counsel that even though many allegations are made in the Original Petition, many of them are flimsy in nature, inconsequential and even a bare reading of the same would go to show that the said allegations made by the 1st Respondent against the appellant will not amount to any cruelty at all. Even if certain verbal observations alleged to be made by the appellant are taken as correct, same will not in any manner cause any distress or mental agony to the 1st Respondent and therefore the same cannot be termed as mental cruelty for the purpose of constituting as a ground for dissolution of marriage. Even though certain allegations are made attributing cruelty of not taking care of the 1st Respondent by the appellant during hospitalization, the said allegations are not substantiated by cogent and reasonable evidence to satisfy the confidence of the Court to order dissolution of marriage on the ground of cruelty, contends the counsel. It is also contended by the learned counsel that in order to dissolve a marriage on the ground of mental cruelty, the cruelty should be of such a nature which compels a person to withdraw from the marital life. It is also contended by the learned counsel that even according to the 1st Respondent, he was ready and willing to take back the appellant to the matrimonial home and even made attempts to pacify the situation to take the appellant back to the matrimonial home in order to lead a happy and contented marital life. That apart, learned counsel contended that going by certain material allegations with regard to cruelty alleged by the 1st Respondent with respect to use of abusive language connecting the birth of the child and its paternity, there is no evidence adduced to support the allegations made by the 1st Respondent and therefore there is no corroborative evidence from the side of the 1st Respondent to substantiate the said contention made.

13. We have evaluated the pleadings in the Original Petition and the written statement, perused the entire records and the evidence adduced by the rival parties. According to us, the evidence adduced by the parties is nothing but oath against oath. Even though PW 2, a close relative of the 1st Respondent was examined to corroborate certain aspects of the evidence adduced by the 1st Respondent, the same did not at all corroborate with the pleadings and evidence of the 1st Respondent. The 1st Respondent in the Original Petition has not made any statement with regard to the bystanders in the hospital while he was admitted in the hospital twice during the continuance of marriage. But, PW 2 during cross-examination has given an embellished version that he and his children were the bystanders of the 1st Respondent in the hospital. If such a situation was prevailing, the same would have definitely found a place in the pleadings made by the 1st Respondent. The same would have been a vital pleading also. In the absence of pleading, such a vital aspect deposed by PW 2 cannot be taken into account to substantiate the pleadings and evidence tendered by the 1st Respondent. Moreover, from the nature of allegations made in the Original Petition, we are of the considered opinion that many of the allegations made are flimsy in nature which are not sufficient enough, reposing confidence in us to arrive at a finding that mental cruelty was inflicted by the appellant to the 1st Respondent. Even according to the 1st Respondent, the incidents alleged which are material in nature were in the presence of family members as well as third persons. None of the material witnesses were examined by the 1st Respondent to substantiate the material part of cruelty alleged by the 1st Respondent against the appellant. Whatever material allegations made by the 1st Respondent in the pleadings and in the deposition were denied by the appellant and therefore there was no material evidence before the Court to arrive at a finding that there was mental cruelty on the part of the appellant which were persuasive enough for the Court to arrive at a conclusion that the appellant inflicted mental cruelty on the 1st Respondent and order dissolution of the marriage between them. Moreover, the appellant has asserted in her cross-examination that it was she who looked after the Respondent during hospitalisation and thereafter also.

14. It is also pertinent to note that, the 1st Respondent alleged cruelty against the appellant by stating that she always quarrelled with the 1st Respondent and created situations causing mental agony and distress to him. On the other hand, the appellant in the written statement has contended that she has treated the 1st Respondent with utmost care, love and affection and due to the mental and psychotic disorders exhibited by the 1st Respondent, the marital life could not be carried on successfully and with contentment. She has also made specific allegations against the 1st Respondent with regard to the suspicious character exhibited by him against the appellant. The said allegations made by the appellant were approved by the 1st Respondent during cross-examination of the 1st Respondent by the counsel for the appellant. During cross-examination, even without any pleading, the 1st Respondent has made wild allegations against the

appellant especially challenging her chastity and her alleged adulterous relationship and life with many of the young persons in the neighbourhood of the marital home. Therefore, on an evaluation of the entire pleadings made by the appellant and testing the same against the deposition of the 1st Respondent, it can be seen that appellant has made out a very consistent case against the 1st Respondent which is substantiated and corroborated by the evidence tendered by none other than the 1st Respondent. Therefore, on a totality of the facts and circumstances and assimilating the factual and legal situations, we are of the considered opinion that the pleadings put forth and the evidence adduced by the appellant is trustworthy than the evidence tendered by the 1st Respondent. Moreover, from the facts, evidence and circumstances, we feel that the 1st Respondent was an unsteady character and did not have a consistent case during the proceedings. The 1st Respondent even went to the extent of stating that it was based on allegations of adultery that he has filed the application for dissolution of marriage.

15. The bond created by a marriage cannot be dissolved by relying on flimsy, shallow and baseless allegations. In order to establish the ground of mental cruelty, there should be sufficient pleading and evidence which is substantial and material in nature to the extent of creating a permanent mental distress and everlasting disturbance to the mind of the person alleging cruelty. Such an injury also should bear a deep rooted feeling and impression in the mind of the recipient of the injury that the wedlock will not be able to be carried on any further smoothly and successfully. That apart, stray and inconsequential allegations made, even if proved, will not by itself contribute to the factum of cruelty. As we have found out earlier, this is a case where the 1st Respondent himself has pleaded that he went to the house of the appellant on various occasions along with his relatives to persuade the appellant to join the matrimonial home. Therefore, we are not at all persuaded to think that the cruelty alleged by the 1st Respondent in the petition is sufficient enough to constitute cruelty as is contemplated under the Hindu Marriage Act, in order to dissolve the marriage. Furthermore, dissolution of marriage cannot be ordered by the Family Court on mere asking by the petitioner. Utmost care, caution and circumspection should be observed by the Family Court while considering a case for dissolution of marriage otherwise disastrous consequences will be occurred in human bonding built upon marriage. In the facts and circumstances, we feel that there was no evidence before the Family Court to arrive at a conclusion that the appellant inflicted mental cruelty to the 1st Respondent so as to order dissolution of the marriage. Moreover, the evidence let in by the appellant inspires more confidence in us and we are of the opinion that same is trustworthy and believable. Therefore, we have no other option than to arrive at a conclusion that the order of the Family Court cannot be sustained either factually or legally.

Therefore, the appellant succeeds. Resultantly, the appeal is allowed and the Original Petition No. 574 of 2008 on the files of the Family Court, Nedumangad is dismissed.