
(1991) 09 MAD CK 0068
In the Madras High Court
Case No : C.M.S.A. No. 39 of 1989

Jaigopal Nagarajan

APPELLANT

Vs

Gowri

RESPONDENT

Date of Decision : 05-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Hindu Marriage Act, 1955 — Section 12(1), 12(1)(b), 5, 5(ii)(c)

Citation : (1991) 09 MAD CK 0068

Hon'ble Judges : Mishra, J

Bench : Single Bench

Advocate : P.S. Raman, for the Appellant; S. Chellaswamy and Mr. B. Sadasivam, for the Respondent

Final Decision : Dismissed

Judgement

Mishra, J.—The appellant herein brought an action for annulment of his marriage with the responds in admittedly solemnized in accordance with the Hindu rites on 24.1.1977. He based his action on the cause that his wife allegedly suffered under the spells of epilepsy at the time of her marriage Courts of fact however have held that there has been no conclusive evidence to hold that she had the ailment at the time of her marriage and thus dismissed the suit. It is on record that the respondent had attacks of fits in the year 1969 when she was treated by an eminent neurosurgeon Dr. B. Ramamoorthy who in his prescription (Exhibit B97) while indicating the course of treatment indicated poetical epilepsy. She was again examined by Dr. Ramamoorthy in the year 19/4. The prescription (Exhibit B64) indicated mild disturbance. In his deposition of Dr. B. Ramamoorthy (R.W. 2) said "from records alone we cannot say whether fits had been controlled". After the marriage, however, she was again examined by Dr. B. Ramamoorthy in the year 1980 (Exhibit B65). In his there is no indication of any disturbance or epilepsy. In his deposition Dr. B. Ramamoorthy has said: "No finding of epilepsy is given in the report. My treatment to the respondent consisted of suitable drugs and general tonics. Respondent's fits were controlled.

Fits stopped". R.W. 2's deposition on the subject is however to the effect that after 1969 there was one instance of freezing like statue in 1975 but according to him this could not be called epilepsy proper. There was same attack in the year 1978. Still according to the doctor this also could not be called epilepsy. He has deposed on 11.4.1984 that from 1969 the health of the respondent till the date of his deposition was good and further stated she has been taking medicines and tonics. She has a normal male child. The fits she had in 1969 had been completely controlled. From 1969 till date the respondent has not been subjected to recurrent attacks of epilepsy. I do not agree with petitioner's description of the disease as monstrous malady permanent physical handicap ugly disease peculiar and apical defect. The court of appeal below has said on the basis of the above expert evidence as well as other evidence on the record: I am unable to conclude that the disease that the respondent had in November and December, 1977 was epilepsy. After a careful consideration of the documentary and oral evidence I am also of the view of the trial court that the petitioner has not proved that at the time of marriage the respondent was subjected to recurrent attacks of epilepsy."

2. S. 5 (ii) (c) of the Hindu Marriage Act 1955 reads:

5. A marriage may be solemnized between any two Hindus if the following conditions are fulfilled namely:-

(i) xxx

(ii) At the time of the marriage neither party.

(a) xxx

(b) xxx

(c) Has been subject to recurrent attacks of insanity or epilepsy.

S. 12 (1)(b) of the said Act states

S. 12(1) any marriage solemnized whether before or after the commencement of this Act. Shall be voidable and may be annulled by a decree of nullity on any of the following grounds namely:

(a) xxx

(b) That the marriage is in contravention of the condition specified in clause (ii) of S. 5....

3. The appellant thus on the allegation that the respondent suffered from attacks of epilepsy at the time of marriage moved for annulment thereof. The words "at the time of marriage", which are crucial have to be understood in the scheme of the law on the subject, to mean if not in the course of the marriage at least as close and near to the time of marriage. This meaning which obviously is the most logical of any other meaning that can be given to the words "at the time of marriage" has been accepted by the Andhra Pradesh High Court in the case

reported in *V. Balakrishna v. Lalitha* AIR 1984 AP 223. The Delhi High Court has also taken the same view in *Kushwant Kaur v. Balwant Singh* (1982) 2 MC 45. Attacks or fits of epilepsy like attacks of insanity is qualified, however by the word recurrent which will get the only meaning of attacks more than once and in such intervals that one may infer the continuity of the ailment to enter into the life of the couple after the marriage. But then, existence of the ailment at the time of marriage so as to satisfy the requirement of the law shall have to be proved by the appellant who sought annulment of the marriage. He brought some evidence including a certificate prescribed by a certain doctor (Dr. Shetty) but then the said doctor was never examined as a witness. The only expert evidence on the record was that of Dr. B. Ramamoorthy. The courts of fact have accepted the said evidence and recorded the finding as above. In *Janki Dhobi and Others Vs. Sitaram Singh and Others*, after considering in some details as to what may constitute a substantial error of law warranting interference in a second appeal I have said:

I have my preference for the principle and interpretation that shall make the law real and living. A mistake of law going to the root of the controversy, ignorance of law exhibited by the court perverting its adjudication, a court of law acting without judicial discipline and committing error of judgment in regard to the issues involved in a case, if allowed to stand would make the law and the court incompetent and illegitimate. Such questions may be mixed questions of fact and law like cases in which a conclusion of fact is recorded without considering the case in certain important aspects and/or without considering important evidence. A question of law which is not dependent upon examination of the evidence and requires no fresh investigation of facts, a finding based on evidence but perverse in the sense that no normal person could arrive at that finding, a finding based on no legal evidence or without judicial consideration of the facts in issue and the evidence on the record in my view are substantial questions of law depending of course on the effect caused by them on the adjudication of the issues between the parties.

The instant case is one which cannot be brought under any of the aspects enumerated by me in *Janaki Dhebi's* case (*supra*) Any erroneous finding of fact or even an error of law which has not perverted the adjudication, however will not be substantial error of law attracting the provisions under S. 100 of the Code of Civil Procedure. Since in my opinion this case is concluded on findings of fact there is no merit in the appeal. The appeal is accordingly dismissed. No costs.