
(2009) 06 MAD CK 0289
In the Madras High Court
Case No : C.M.A. No. 1423 of 2004

Mr. K. Umasankar

APPELLANT

Vs

Mrs. Suryakala

RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2009) 6 MLJ 351

Hon'ble Judges : T.S. Sivagnanam, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : G. appavu, for the Appellant; C.N.G. Ezhilarasi, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—The appellant is the husband whose petition for divorce was dismissed by the Family Court. The facts in brief:

The parties were married on 03-08-1995. It was an arranged marriage. It was understood that the husband was living in a joint family. The wife was a single child and both parties understood that she would cope up with the requirements of living in a joint family. No pecuniary demands were made by the husband's side on the wife's parents. The parents of the husband assured the wife and her parents that she would live just as she lived with her parents. His hope for a happy married life were shattered when even on the first night she suggested that they should live independently since she would not be able to cope in a joint family. From that date, the respondent's wife adopted various tactics to pressurise the appellant's husband to set up a house separately. The respondent was working in Shriram Chits Company. She was asked to resign her job, but she did not agree. She also declared that the family members of her husband were far lower in status compared to her. She abused her husband and his family with wounding words. The frequent visits by her parents did not improve the situation. Frequently, she would leave home without informing him and go to her parent's house and repeatedly he had to go and persuade her to return. There

was mental agony and frustration. In the meantime, she conceived a child. Again on the pretext of taking rest, she went to her parent's home. There was total non-cooperation by her in the joint family. She kept the appellant always on tenterhooks. She also spread rumours amongst community that the appellant and his family members were all drunkards and had lost their property because of gambling at races and other bad habits. This lowered their image in the community. These rumours were spread to alienate the appellant from his family. The appellant suffered enormously because of all this. It was increasingly becoming impossible to persuade the respondent to behave amicably with the members of his family. She created scenes at home attracting the attention of their neighbours and tarnished their respect in the community. Her parents also confronted his parents and demanded that a separate home should be set up. This was in December 1996. They also threatened that they would lodge complaints to the police. It was her practice to save her income and to squander his money. He tried to encourage her to develop a saving habit by purchasing UTI Units and other deposits. She slowly and systematically moved all her belongings and all her valuable jewellery and even her certificates. On 16-01-1997, she left the marital home declaring that she will not return unless he submitted to her dictates and demands. Even the birth of the child did not improve the situation. When his father died, he hoped it would pave the way for unity. But she never participated in the last rites and left abruptly. Losing all hopes of union a legal notice was sent on 02-07-1997 and a petition was filed u/s 13(1)(a) of the Hindu Marriage Act.

2. In response, the wife denied all the averments. According to her, she assured full co-operation and being the only daughter, she was eager to live with the joint family. She was not asked to stop working. On the contrary, her husband and his mother insisted that in the present economic conditions, a second income was necessary. On the first night, what really happened was that the husband came intoxicated and she could not bear the alcoholic smell. When she informed this to her in laws they merely brushed it aside saying that such habits are common. It is true that she is working in Shri Ram Chits Company. But it is not true that they asked her to stop working. Whenever it was the pay day, the husband would punctually come to her office premises under the mild influence of alcohol to collect the salary. The joint family did not break up because of her. They took up another residence only because the landlord demanded huge advance. The husband would go home late and also drunk. She was very disappointed by this. She never spread rumours about his family but it is an admitted truth that the male members of the husband's joint family ruin the entire wealth in unpalatable habits. Her parents never visited them frequently. In fact his relatives indirectly told her parents that the house in their name would be transferred to her. The appellant often came late and drunk and no one interfered with the wounding comments made by the mother-in-law. She tried to be pleasant and ignored all this. It is only for health reasons that she stayed in her parent's house and not for any other reasons. During her Seemantham celebrations, her relatives were

not properly attended to. She was forced to resign her job on 02-07-1996. She was subjected to enormous suffering. She lived a life of suffocation. She was asked to go to her parent's house for getting money for paying the rent. When she refused, she was ill-treated more. Thereafter, he and his parents started to coerce her that if she wanted her parents to visit her, the immovable property should be transferred to her name. He mercilessly and without conscience threatened her that if she failed to do so he may even do away with her. It is not correct to state that she is always luxurious and spending of the money. It was not correct to state that she reluctantly came to her father-in-law's last rites. She rushed to attend the last rites. But she was not allowed to participate. The harassment and torture continued and finally on 16-01-1997 she was forced to leave the house. ON 23-01-1997, under the influence of alcohol, he went to her house and demanded the transfer of title of the property. She only prayed that he should set up a separate house away from his other relatives and take his time for his wife, daughter and mother. Therefore, the petition for divorce must be dismissed as devoid of merits.

3. On the side of the appellant only one witness was examined which was himself and nine exhibits were marked. Three witnesses were examined on the side of the respondent. The learned Principal Judge, Family Court found that the marriage had not irretrievably broken down and that the facts of cruelty were not proved.

4. The learned Counsel for the appellant submitted that the parties having been living separately, right from 1997, that is 12 years from the date of decree which was in 2002. The learned Counsel submitted that the learned Family Court Judge had after rejecting her allegations that the appellant was a drunkard ought to have seen that such baseless and scathing allegations themselves were acts of cruelty and it was erroneous to dismiss them as minor wear and tear of daily life. The learned Counsel submitted that it was clear from the evidence that the respondent was not living with her husband and at any rate in a joint family; and because she had been brought up as the only child she is not willing to accept even the common day to day requirements of a family. The learned Counsel submitted that her leaving the house on 16-01-1997 was without justification. She had given complaints to the police which resulted in the unnecessary detention for 10 hours in the Police Station and she has also brought down the image of their family by making complaints to his Community people. The baseless allegations that they had ruined of their wealth in immoral habits had lowered their image in the community and the appellant was so much disgusted that it is an act of extreme mental cruelty. The learned Counsel also submitted that it is very clear that the respondent has no love for her husband as could be seen from the harsh allegations in the counter. According to him, the Family Court erroneously declined to grant him the relief prayed for.

5. The learned Counsel for the respondent submitted that the allegations in the counter were made only in response to the averments in the petition where she

was branded as a stubborn arrogant woman. She also submitted that when the woman wanted to reunite with her husband, her only recourse would be to approach the community elders and pray for reunion. The learned Counsel for the respondent on the other hand that no acts of cruelty was made out and the judgment required no interference.

6. Now let us examine the various allegations and counter allegations made by the parties:

(i) The allegation regarding drunkenness

According to the respondent, on the first night, the appellant had come under the influence of alcohol and this was intimated to his parents on the next day. The Family Court did not believe this and held that "it is only concocted for the purpose of this case." In her evidence, she had stated "on the first night he came drunk and therefore, I was deceived". Her allegations are not only that he was an alcoholic, but that his whole family had recklessly destroyed their family wealth by drunkenness and bad habits. This is what she has stated in the counter.

It is further submitted that the petitioner used to come home often quite late and on several occasions drunk. Though she was much disappointed at this, as she was in the beginning of her marital life she tried to tolerate. However she made sincere efforts requesting the petitioner not to come home drunk as she could not bear the alcohol smell. But the petitioner hardly needed to her request. Here again it is submitted that she never spread rumours about his family at any point of time. It is an admitted truth known to the neighbours that the male members of this joint family ruined the entire wealth in unpalatable habits. The respondent came to know of the same habits. The respondent came to know of the same from the neighbours and hence there was no chance for her to spread such a rumour amidst neighbours thereby mollyfying (nullifying) their respect, honour and dignity. In fact the neighbours commented to her that she owned huge wealth. Though she was much troubled she truly tried to ignore this comment in order to avoid disharmony between her and her husband and the in laws.

But there is no proof of these allegations. We do not know what is the extent of the property, nor as to which properties were ruined by the bad habits of the family. The allegations are baseless and unproved. Therefore, it is clear that these reckless allegations of drunkenness not only of the petitioner, but his whole family by which they had destroyed the entire wealth, are false allegations and not borne out by evidence.

(ii) The allegation regarding the demand of the husband to transfer the house in her name

The Family Court rejected this on the ground that it is not possible to accept that the petitioner and his parents demanded to transfer the house that stands in the name of the respondent's parents immediately. "It is only a cock and bull story. Hence it is unacceptable one". Therefore, this allegation of unreasonable

demands made by the appellant and his parents have been rejected by the Family Court.

(iii) Break-up of joint family because of the wife's conduct

It is the appellant's case that she had frequent quarrels with the members of the petitioner's family and that she disrespected her, which resulted in the break-up of the joint living of the members of the family. With regard to this the Family Court extracted the appellant's evidence which is to this effect:

In June 1996, my father, mother and I came away separately. The respondent had gone to the parent's house for delivery. It is because of her inimical attitude that we came separate.

The Family Court rejected the appellant's case stating that when she was not in the marital house, she cannot be said to be the cause of the break-up. But the evidence cannot be read disjointly. The appellant states that since the respondent's attitude with her family members was unfriendly and hence, they set up an independent house in July, 1996 and she was at that time in her parent's house for delivery. It is possible that they chose to shift the residence at that time, to cause least physical disturbance to the pregnant woman. Therefore, the evidence of the appellant that they had to separate because of her attitude cannot be rejected.

(iv) Threat to life made her leave the house

It is her case that on 16-01-1997, she left the house because she was threatened by the appellant and his mother that they would kill her. But she has not stated that the appellant and his parents threatened her that they will pour kerosene. Therefore, the allegations that the appellant threatened to do away with the respondent were found to be false by the Family Court. When the case of the respondent that she left the house on 16-01-1997 because of the torture inflicted by the appellant and his mother has been rejected as unacceptable, then we have to accept the case that she left the marital home on her own accord without any intention to return.

(v) The allegation regarding the complaints made to the police and before the Community Association

Before the Family Court, the respondent had conceded that she had given a complaint before the Police Station and also before her community Association. The Family Court rejected the appellant's case of giving complaints amounted to cruelty on the ground that this happened during the pendency of the petition and therefore, cannot be included as an act of cruelty.

7. Ex-P8 in which the appellant has accepted that she had taken away all her belongings. Ex-P8 is dated 20-12-1997 and the respondent has signed stating that, "The above mentioned stridhan properties were taken by me from my husband amicably". After signing this for some odd reason, the respondent has

rescind from this possession and decided to contest the matter.

8. In the facts and circumstances of the case, it is clear that both the parties agreed to separate by mutual consent. The allegation that before the passing of the decree, the respondent gave complaints before the Police Station and the Community Association will not be of any help to the appellant to seek divorce of mental cruelty. But there are other allegations on the side of the respondent that the appellant coerced the respondent to leave her job and the respondent requesting the appellant to leave his parents and set up a separate residence. If the respondent had insisted on continuing her employment notwithstanding his request to resign from her job in Shri Ram Chits that cannot be an act of cruelty. Similarly, her request to set up a separate residence cannot also be termed as such an act of cruelty for grant of divorce. But we have to see the whole picture of this man and this woman who have joined in marriage and who have now come before the Family Court. There are no set parameters of cruelty. It depends on many variables, including the social status, educational background, etc.

9. In *G.V.N. Kameswara Rao Vs. G. Jabilli*, , the Supreme Court held that, "because of non-cooperation and the hostile attitude of the respondent, the appellant was subjected to serious traumatic experience which can safely be termed as "cruelty"..". In the present case, the Family Court held that the husband himself was responsible for many of the incidents and he shall not be allowed to take advantage of his own faults. In the above cited judgment, the High Court also came to the same conclusion, but the Supreme Court felt that the High Court was not justified in its conclusion.

10. In 2009 (1) DMC 515 (SC) (*Vihnu Dutt Sharma v. Manju Sharma*), the Supreme Court held that to grant divorce on the ground of irretrievable breakdown would amount to add such a ground to Section 13 of Hindu Marriage Act and that cannot be done.

11. In *Naveen Kohli Vs. Neelu Kohli*, , a three Judge Bench of the Supreme Court held as follows:

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

...

83. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

84. The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

...

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

88. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

89. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the trial court. In our opinion,

wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

In the above case, the Supreme Court also held thus:

81. The findings of the High Court that the respondent wife's cautioning the entire world not to deal with the appellant (her husband) would not lead to mental cruelty is also wholly unsustainable.

So on facts, the Supreme Court found that this was cruelty.

12. Coming to this case, after holding that the respondent's allegations that the husband was alcoholic were false; and the allegations of financial demands by the husband were false; and the respondent's allegations that the entire family members of the husband were persons of immoral habits were false, the consequent dissipation of the family wealth was not proved, the trial court should have dissolved the marriage on the grounds of cruelty. We are unable to understand why these acts were not enough to prove cruelty. These acts of cruelty are similar to the case in Naveen Kohli. The appellant has clearly made out a case for dissolution of marriage. Incidentally, we also feel that the marriage also has irretrievably broken down and no purpose will be served by keeping it alive.

13. For all these reasons, the civil miscellaneous appeal is allowed; there will be a decree for dissolution of the marriage dated 3.8.1995, but there shall be no order as to costs.