
(1984) 08 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : First Anneal From Order No. 63-M of 1982

Raj Rishi

APPELLANT

Vs

Smt. Sudesh Kumari

RESPONDENT

Date of Decision : 21-08-1984

Acts Referred:

Evidence Act, 1872 — Section 64

Citation : (1984) 08 P&H CK 0005

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Ravinder Chopra, for the Appellant; Viney Mittal, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—Appellant-husband's petition under lection 12 of the Hindu Marriage Act, 1955 (for short, the Act) for annulment of the marriage between the parties has been dismissed by the trial Court. Though besides this relief the Appellant too had claimed a decree of divorce in the alternative on the ground of desertion and cruelty yet at the time of the final hearing of the case the raid prayer was given up and is no more reiterated before me. His sole claim now is that since the Respondent wife at the time of their marriage on December 11, 1975, was subject to recurrent attacks of epilepsy, he be garnted a decree of nullity annulling the marriage Having heard the Learned Counsel for the parties at some length, I find that he does not deserve to succeed.

2. The trial Court has declined the above noted relief on two grounds: (i) since subclause (c) of Clause (ii) of Section 3 was for the first time made a part of the statute the Marriage Laws (Amendment) Act, 1976, i.e , after the marriage of the parties, the validity of the marriage cannot be assailed on the above noted ground and (ii) the evidence led by the Appellant does not establish that at the time of the Respondent's marriage, she was subject to recurrent attacks of epilepsy. His Learned Counsel contends with some amount of vehemence that these conclusions recorded by the trial Court are unsound and deserve to be

upset. In order to appreciate the argument of the Learned Counsel, it is but necessary to have an idea of the relevant provisions of the Act.

3. Section 12 provides that any marriage solemnized between two Hindus, whether before or after the commencement of the Act, shall be voidable and may be annulled by a decree of nullity on the ground that the marriage is in contravention of the conditions specified in Clause (ii) of Section 5. Section 5 lays down the pre requisites or conditions of a valid Hindu marriage. One of such conditions as contained in sub Clause (c) of Clause (ii) of this section is that neither of the parties at the time of marriage has been subject to recurrent attacks of epilepsy. In case either of the parties was subject to such a malady, the marriage can be annulled by a decree of nullity in terms of Section 12 of the Act. The submission of the Learned Counsel is that the very opening words of Section 12 make the operation of subclause (c) of Clause (ii) of Section 5 retrospective and the lower Court was not justified in holding that the marriage performed prior to the introduction of sub Clause (c) to the statute cannot be annulled on the ground that one of the parties was at the time of the marriage suffering from recurrent attacks of epilepsy. To me the submission of the Learned Counsel appears to be full of merit. The lower Court has concluded this aspect of the matter in the following words:

In my opinion, the ground is not available in as much as if it were to be held otherwise than it would lead to a ridiculous situation since though the marriage was valid on the day it was performed, it would be rendered invalid at a subsequent stage. The validity of the marriage has to be judged on the anvil of law then prevailing. Grounds for divorce, separation, restitution of conjugal rights could be added or omitted but so far as the binding nature of the marriage is concerned, a valid marriage when performed could not be termed as invalid by subsequent legislation.

The confusion from which the trial Court appears to suffer is cleared if Sub-clause (c) and relevant part of Clause (ii) of Section 5 are substituted for Clause (b) of Sub-section (1) of Section 12. In that event the relevant part of Section 12 would read:

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)

(b) ... at the time of marriage, either party has been subjected to recurrent attacks of insanity or epilepsy.

It is thus apparent that while claiming relief u/s 12 of the Act, it is not material when was the marriage performed. All that has to be seen is as to whether at the time of the marriage either of the parties to the marriage was suffering from recurrent attacks of epilepsy. Otherwise also if the trial Court accepts, as it does

as per the quote above, that fresh grounds for divorce, separation or restitution of conjugal rights, etc., can legally and legitimately be added to the statute by way of subsequent amendment, then Marriage Laws (Amendment) Act. 1976 does nothing more than to add to Section 12 a ground in terras of Sub-clause (c) of Clause (ii) of Section 5 for the annulment of the marriage. Thus I set aside the above noted conclusion of the lower Court.

4. So far as the other aspect of the matter is concerned, the trial Court has concluded the same in the following manner:

Thus, though I am inclined to think that at the time of marriage, the Respondent was suffering from epilepsy yet there is no basis for holding that she was having recurrent attacks at the time of marriage.

This conclusion appears to be unexceptionable. In order to establish that at the time of marriage between the parties the Respondent was subject to such recurrent attacks of epilepsy which can entitle the Appellant to the relief sought for, his Learned Counsel relies primarily on the statements of A W.1, Dr Dharam Parkash Dubey, Medical Specialist, Newton Francis Hospital. Ferozepur; AW.3, Dr. T.N. Suandangi from Christian Medical College and Hospital, Ludhiana and Appellant's statement as AW. 4, As per the evidence of the doctors, each one of them had examined the Respondent thrice during the period May 3, 1976 to February 19,1981. They have deposed about Respondent's mental condition on the basis of certain record in their respective possession. This evidence does disclose that during the above noted period the Respondent was subject to attacks of epilepsy but they are not sure about the cause and the duration of the same In this regard, A.W. 1 has made the following significant statement:

At no time she had a fit in the hospital. So the diagnosis is not passible only on the basis of present case history. In October she gave her history as under:

"She says that because of less dowry she is not treated well by in-laws and even her husband, who is ready to get a divorce".

His first diagnosis was that the Respondent suffered from "major epilepsy" but later when she was examined in the month of October, 1976, the diagnosis was "hysteria". A.W. 3, Dr. T. N. Shandangi, besides stating that though there was no neurological deficit and the X-ray of Respondent's skull taken on December 17, 1976 showed every thing normal, yet her E.E.G disclosed evidence of grandmal epilepsy, has deposed that "she had a history of generalised fits for the last five years" He, however, candidly admitted that "it was difficult to say as to what was the duration of the disease except as told by the patient." He also admitted that after her first visit to him on December 14, 1977, when certain treatment and medicines were prescribed for her, she did not suffer any attack of epilepsy till the date of his making the statement, i.e., February 19, 1981. According to him, the epilepsy from which the Respondent was suffering was curable "by regular treatment". He, however, has not stated anywhere that the case history referred to by him was given by the Respondent or by whom. This evidence of the

doctors, to my mind, falls far short of the standard to record a conclusion that the Respondent was suffering from epilepsy on or earlier to the date of her marriage, i.e., December 11, 1975. Firstly, the record on the basis of which these two gentlemen have deposed in Court, has not been made part of the evidence. Without proof of that record the evidence of these witnesses cannot legally be attached any value in the face of the provisions of Section 64 of the Evidence Act. This section is based on the "best evidence" principle. This rule is probably older than its reasons, one of which is that the Court may acquire knowledge of the whole contents of the document or record which may have a very different effect than what a witness has to say about it. Secondly as already indicated, these witnesses are not sure about the duration for which the Respondent has been suffering from epilepsy prior to her examination by them. In his own statement the Appellant has deposed that even on the very next day of the marriage, Respondent suffered an attack of epilepsy. This statement besides being self-serving, loses much of its weight on account of his admission that while deposing in Court, he had made the statement on the basis of a note prepared by him which was exhibited as R.I.

5. It is next contended by his Learned Counsel that the Respondent is bound by her admission made to AW. 3 that she had been suffering from fits for at least five years prior to the date (December 17, 1976) of her medical examination by him and in the light of that it is well established on record that on or prior to the date of marriage of the parties, the Respondent was subject to such recurrent attacks of epilepsy. Besides this the stand of Learned Counsel further is that the totality of the above noted evidence is enough to raise an inference that the Respondent was suffering from such a malady on or prior to the date of her marriage. This submission of the Learned Counsel to me appears to be conjectural. Firstly, A W. 3 has nowhere stated in categorical terms that the Respondent ever admitted before him that she was suffering from such recurrent attacks of epilepsy on or prior to the date of her marriage and secondly, this admission of her has neither been pleaded or relied upon by the Appellant in his petition u/s 12 of the Act nor has it been put to the Respondent during the course of her cross-examination as required by Section 145 of the Evidence Act. In the face of the evidence of the two doctors referred to above that they are not sure about the duration of the problem for which the respondeat was said to be suffering, there is no basis for raising any inference that she was subject to any recurrent attacks of epilepsy on or earlier to the date of marriage of the parties.

6. As against this, the firm stand of the Respondent wife all through has been that she never suffered from any epilepsy prior to her marriage and right from the date of her marriage she was harassed by the Appellant and his family members in order to secure more money and gifts by way of dowry, which ultimately told upon her health and she later started suffering from fits. In this regard she has been supported by R.W. 2, Lal Chand, a family friend of the Respondent and R W. 3, Dev Raj Sharma. Admittedly Respondent's father had died about a year earlier to her marriage.

7. In the light of the above noted resume of evidence on record, I am satisfied that the Appellant has not even been able to establish that prior to her marriage the Respondent had an attack of epilepsy, what to talk of recurrent or repeated attacks. Thus for the reasons recorded by the lower Court and as recorded above, I dismiss this appeal but no order as to costs.