
(1993) 02 MP CK 0030
In the Madhya Pradesh High Court
Case No : F.A. No. 86 of 1992

Sunitabai	Vs	APPELLANT
Devendra Kumar		RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Hindu Marriage Act, 1955 — Section 12

Citation : (1993) 1 DMC 618

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : P. Mathur, for the Appellant; C.B. Patne and S.D. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.—This appeal is directed against the judgment and decree dated 17.3.92 of the IIInd Additional District Judge, Shajapur Camp Agar passed in Civil Suit No. 8-A of 1989 whereby the marriage between the appellant and respondent have been dissolved and declared to be void.

2. The admitted facts of the case are that the appellant and respondent were married at Bhopal on 19.4.86 according to Hindu rites. Thereafter the appellant went alongwith respondent to Agar where he was working. During their stay at Agar the appellant-wife had an attack of epilepsy. She was unconscious for some period with all the symptoms of epilepsy. On enquiry she disclosed that she is suffering from this ailment fromher childhood.

3. The respondent-husband took her to Nagpur and got her treated/ from Dr. Mukund Baheti. It was told to him that it was incurable and was further confirmed that the ailment is nearly 15 years old. During her stay with the respondent she had many attacks of epilepsy. Thus, she is suffering from recurrent attacks of epilepsy.

4. Respondent-husband further asserted that this ailment of non-applicant was

not disclosed to him and his consent was obtained by fraud and therefore, the marriage between them is voidable and he is, therefore, entitled for a decree of nullity.

5. The appellant-wife denied the allegations and pleaded that occasionally she suffered from severe headache and that the behaviour of her inlaws was not cordial and, therefore, she was irritated and used harsh words against them.

6. After hearing, the learned Judge had found that appellant wife is suffering from epilepsy from the age of four years and this fact was concealed from the husband (respondent here). The misbehaviour of the inlaws of appellant was not found proved. As such, a decree declaring the marriage as a nullity has been-granted. Hence this appeal.

7. The contention of the learned Counsel for the appellant is that she has not been given a fair opportunity of adducing evidence and rebutting the contention of the respondent-husband, (ii) that the fact other suffering from recurring attacks of epilepsy has not been proved by cogent evidence.

8. The respondent-husband has examined himself as B.W.I, Dr. Mukund Baheri (PW. 2), Dr. V.V. Nadkarni (PW. 3), Rameshchandra Verma (PW. 4), Vinodkumer Khandelwal (PW. 5) and Gurunath (PW. 6) in support of his contention.

9. On perusal of lower Courts record it appears that the case was fixed for non-applicant's evidence on 16.9.91 vide order dated 13.8.91 but the defence witnesses were not present. The case was adjourned to 23.10.91, Defence witnesses were further not present on that date. As such, the case was adjourned to 19. 11.1991. On that day the defence witnesses including the non-applicant (appellant here) were not present. As such, the evidence of non-applicant was closed. However, it was observed that if the witnesses of the non-applicant are kept present next day and an application for recording their evidence is filed, the same will be considered, the case was fixed for 18.12.91. None of the witnesses on behalf of non-applicant were present on that day and no application for producing the witnesses were also filed. However, adjournment for arguments were sought and the same was granted and the case was adjourned to 24.1.92. On 24.1.92 it appears that the nonapplicant was present and filed an application for an opportunity for adducing the evidence. The same was granted and the case was fixed for 17.2.92. On 17.2.92 further adjournment was sought by the Counsel for non-applicant. The case was fixed for 19.2.92. The case was further adjourned for the defence evidence on 19.2.92 and the case was posted for 16.3.92.

On 16.3.92 again a request for adducing the evidence was made. The same was refused and the case was closed.

10. In view of the facts stated above, it cannot be said that the non-applicant (appellant here) was not afforded an opportunity of adducing the evidence or for rebutting the contention of the respondent-husband.

11. Learned Counsel for the appellant then submitted that she was not paid expenses for depositing the diet-money and expenses of the witnesses and for getting the witnesses examined on commission. This contention of the learned Counsel does not appear to be correct as the learned Counsel failed to show any application to that effect having been presented before the trial Court. Order sheet also does not disclose that she ever demanded expenses for witnesses being examined on commission. Learned Counsel for the appellant could not show as to whether any application for examining any of the witnesses on commission was filed on the dates referred above.

It is surprising that the non-applicant-appellant herself did not appear in the witness-box. Her close relations father, mother and such other person could be produced for showing her condition, during the childhood. But the same also has not been done.

12. Thus, in the opinion of this Court this contention of the learned Counsel for the appellant that she was not afforded an opportunity of adducing evidence, does not appear to be correct.

13. Now so far as the fact of her suffering from recurrent attacks of epilepsy is concerned, the burden of the same lies on the husband (respondent here) before granting a decree for divorce or a decree for annulment of marriage even if the other party has not adduced any evidence the party who seeks the decree is required to prove the fact constituting the ground for divorce or for annulment of marriage. The evidence adduced by the husband (respondent) has to be seen from this angle.

14. The respondent appearing as PW 1 has stated in para 2 of his statement that Sunitabai (appellant here) had an attack of epilepsy within one month from marriage. He was not aware of the fact of her ailment earlier. After her recovery from the first attack when she was enquired about the history of the ailment she disclosed that she is suffering from this disease from her childhood (when, she was aged about 4 years). He has further stated that Dr. Baheti who was treating her from before the marriage had asked the parents of Sunitabai to disclose this ailment to the person from whom she is being married but the same was not done and this fact was concealed fraudulently. He has also stated that Sunitabai (appellant) lived alongwith him at Sarni. She had attacks of epilepsy there also. She was shown to Dr. Vivek Gole. She was admitted in the hospital. Dr. Gole treated her and referred her to Dr. Nadkarni of Indore. Thereafter she was treated by Dr. Nadkarni a-so.

15. Dr. V.V. Nadkarni (PW. 3) has stated that Sunitabai was treated by him for epilepsy in the year 1981. He has further stated that the disease is curable and controllable but in this case it could not be controlled.

Thus, Devendrakumar-respondent stands corroborated by the statement of Dr. Nadkarni about the fact of attacks of epilepsy and her treatment for the same.

16. P.W. 4 Rameshchandra Verma has also stated that in April, 1988 he was residing in a house near the house of the father of Devendrakumar (respondent here). They were married the same month and after about 15 days, he heard shrieks of a lady and went to the residence of Devendrakumar and saw Sunitabai (appellant here) in an unconscious state. Froth was coming out of her mouth and her lower and upper extremities were shivering. He has further stated that on a query Sunitabai disclosed that she was having this epileptic attacks from her childhood.

This witness has further stated that after some time on a day during evening on hearing some loud voice words he went to the house of Devendrakumar, the parents of Sunitabai were present there. Devendrakumar made a complaint to her parents that why this fact of ailment was not disclosed to him and thereafter the father of Sunitabai told them that had this fact been disclosed to him he may not have married. Thereafter Sunitabai was taken by their parents to her paternal house.

17. These facts have neither been rebutted by Sunita Bai (appellant here) by appearing in the witness-box nor had been contradicted by her father. It appears Sunitabai and her near relations including the parents have no courage to appear in the witness-box and face cross-examination.

18. P.W. 5 Vinodkumar Khandelwal has also stated that appellant Sunitabai's father admitted before him that she is suffering from epilepsy. P.W. 6 Ourunath has also corroborated the story of appellant's having epileptic attacks. He has further stated about the condition of Sunitabai during attacks (that the froth was coming out of her mouth and there was shivering on the lower and upper extrimities).

19. P.W. 2 Dr. Baheti has stated that he has treated appellant for epilepsy since January, 86 and continued the treatment upto 17.4.89. He has made a statement on the basis of the record. He has further proved Ex. P/7 to 12 and Ex. P/21 showing the prescriptions. According to Dr. Bahet appellant Sunitabai is suffering from idiopathic epilepsy and the attacks for the same may come any time while working or walking. He bag also stated about the condition- action and reaction of Sunitabai during such attacks. There is aothing to disbelieve Dr. Baheti. Nothing substantial has been brought out during the cross-examination. During cross-examination this witness has further confirmed that she was suffering from this ailment for last about 15 years. This also goes to show that appellant was suffering from this ailment from her childhood.

20. Though from the evidence of Dr. Baheti and Dr. Nadkarni it has come that this ailment can be controlled by persistant treatment and the frequency of attacks can also be brought to the minimum but nothing has been brought from the side of the defence (appellant) to show that there has been decrease in frequency or there has been improvment in the ailment. As observed above, since the appellant wife and her close relatives who could depose about her

conditions from the childhood till today, have not appeared in the witness box and therefore, the contention of respondent-husband that she is suffering from recurrent epilepsy cannot be rejected.

21. It may not be out of place to mention it here that no doubt this burden lies on the party (in this case on the husband) who wants the marriage to be dissolved that the other party is suffering from recurrent mental disorder or epilepsy.

But the burden of proof in the cases of marriage also is to the extent of preponderance of probabilities proof beyond reasonable doubt is not required in such cases.

22. In view of the discussions above, the respondent husband has been successful in proving that appellant-wife is suffering from recurrent mental epilepsy. As such appeal fails and hereby dismissed with cost. However in the facts and circumstances of the case the parties shall bear their own cost. Counsel fee Rs. 400/- if certified.