Radhamony Amma Vs Gopinathan Pillai

M.F.A. No. 861 of 1988

Court: High Court Of Kerala

Date of Decision: Nov. 30, 1989

Acts Referred:
Hindu Marriage Act, 1955 â€" Section 13(1)

Citation: (1990) 1 DMC 434 : (1990) 2 ILR (Ker) 672

Hon'ble Judges: K.P. Radhakrishna Menon, J; B.M. Thulasidas, J

Bench: Division Bench

Advocate: M. Krishnan Nair, for the Appellant; K. Moni, for the Respondent

Final Decision: Allowed

Judgement

K.P. Radhakrishna Menon, J.
The application of the respondent u/s 13 of the Hindu Marriage Act, 1955 seeking dissolution of his

marriage with the appellant by a decree of divorce, stands allowed by the order under attack.

2. Facts pleaded by the respondent in the petition reply stated are : The respondent married the appellant on 16-1-1984. On the same day the

respondent took the appellant to his house. There in his house, the appellant behaved like a mad woman, making the petitioner (respondent) quite

upset, causing much worry and mental pain to him''. The respondent therefore was constrained to enquire into this peculiar behaviour of the

appellant. The enquiry revealed that the appellant was a lunatic and she had been under treatment for lunacy for several years. She was thereupon

taken to a psychiatrist who certified that she was suffering from an incur-able mental disease. The pleading is concluded thus :--

As the counter petitioner (appellant) is suffering from incurable madness, no marital relationship between the petitioner (respondent) and the

counter petitioner (appellant) is happened (sic.)"".

The appellant has in her counter statement asserted that the above allegations are baseless. They are all got up for the purpose of getting a divorce.

3. From the pleadings in the petition, it is clear that the petition is one filed under the first limb of Clause (iii) of Sub-section 1 of Section 13 of the

Hindu Marriage Act.

4. We shall now read the Section.

13(1). Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the

wife, be dissolved by a decree of divorce on the ground that the other party (leaving out unnecessary parts)

(i) . . .

(ii) . . .

(iii) has been incurably of unsound mind"".

Before we go into the merits of the case, we feel it necessary to construe this sub-section; particularly the words ''incurably of unsound mind''.

These words "incurably of unsound mind" depict the state of mind of a person who is incapable of managing himself and hence discarded to

situations where he will not be called upon to manage himself or his affairs but will live an artificial life until his death. From a medico legal point of

view such person will not be able to ''maintain normal contact with external reality, and to appreciate the distinction between what is going on solely

in his own mind, and what is going on beyond it in the external world''. May be that an individual who suffered a severe mental or physical illness

cannot be cured in the sense that he cannot expect to get restored to his original condition. However, such an individual, we would say, is cured of

the disease when he resumes normal life after the treatment notwithstand the fact that he may have to take some medicines to preserve his cure. To

put it pithy if an individual is able to lead a normal life and to manage himself and his affairs, no reasonable person would describe him as incurable

of unsound mind or afflicted by an incurable mental illness because he is advised to take a medicine once a week or even once a day. (See the

decisions in Whysall v. Whysall 1959 (3) All ER 389; Chapman v. Chapman, 1961 (3) All ER 1105; Robinson v. Robinson, 1964 (3) All ER 232

and Taylor''s Medical Jurisprudence.

5. Now coming to the merits of the case : It has come out in evidence (Exts. A3 and A4) that the appellant in the year 1978 when she was about

14 years of age, was suffering from ''Hysteria! Psychosis'' which according to PW 2, the doctor who treated her, ""..... automatically gets cured"".

PW 2 has further stated that ""by a proper management of the patient this can be cured"". Yet another relevant statement discernible from his

deposition is ""such a person need not take medicine throughout his or her life"". No doubt PW 2 has opined that during the period of this illness one

cannot have a married life. However PW 2 has deposed that ""the fact that once she (appellant) had an illness of the like nature does not lead to the

conclusion that she cannot lead a happy married life"". How true this opinion of PW 2, is clear from the fact that she conceived while living with the

respondent in Punjab although the same ended up in a missed abortion. (See Ext. B1). Ext. B1 is dated 1-1-1985. Thereafter during the period

from 11-4-1985 to 22-4-1985, the appellant was treated for mental ailment by PW 5. Ext. A5 may be referred to in this connection. PW 5 has

stated that he had advised appellant to continue the treatment since the disease was likely to recur. However, PW 5 has opined that ""the patient

can attain a social recovery"". In this connection it is relevant to note the oral evidence of the appellant as CPW1. According to her, her failing

memory for which she was treated by PW 5, was on account of the stress, she suffered due to the abortion. That this statement of the appellant

has been accepted as true by the respondent is clear from his subsequent conduct revealed by Exts. B3 to B6, the letters he had addressed to the

appellant during the period from 16-6-1985 to 29-7-1985. These letters do show that the respondent has no case that the appellant was an

abnormal individual. On the other hand these letters positively show that the appellant is capable of not only managing herself and her affairs but the

affairs of the members of the joint family. These circumstances based on evidence, in our view, establish beyond doubt that the appellant is able to

lead a normal married life and to manage herself and her affairs, and if that so, no reasonable person would describe the appellant as incurable of

unsound mind or afflicted by an incurable mental illness. It therefore can be stated without the fear of contradiction that the allegation in the petition

that the appellant is suffering from an incurable mental disease has no basis whatsoever. The respondent in our view has not established the case

alleged in the petition.

6. The court below nonetheless has allowed the petition and in doing so has considered a case different from the one alleged in the petition. That it

is so can be seen from the points formulated and considered by the court below. For easy reference they are extracted hereunder;

(1) Is not Schizophrenia a Psychotic disorder which makes either spouse In a matrimonial home difficult for leading a married life like any other

couple of the same status ?

(2) Whether the 1st petitioner is subjected to the disease schizophrenia or suffering continuously or intermittently a mental disorder of such a kind

and to such an extent that the petitioner cannot reasonably be expected to live with her as alleged in the petition ?

The case covered by those points, in our view fall under the second limb of Section 13(1)(iii). The respondent however, has not pleaded such a

case. It should therefore be held that the court below has not approached the case pleaded in the petition in the right perspective. Under the

circumstances the case ordinarily requires to be remitted back to the court below for a denovo consideration. But that is not necessary because the

evidence on record would clearly show that the respondent has not established the case pleaded. The order under challenge therefore is liable to

be set aside. We accordingly set aside the same. The appeal is allowed. But in the circumstances no order as to costs.