

(2010) 12 MAD CK 0264

Madras High Court

Case No: C.R.P. (PD) No. 3718 of 2009 and M.P. No. 1 of 2009

N. Senthilkumar

APPELLANT

Vs

V. Tamilselvi

RESPONDENT

Date of Decision: Dec. 3, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Hindu Marriage Act, 1955 - Section 13(1)

Citation: (2011) 2 MLJ 798 : (2011) 3 RCR(Civil) 85 : (2011) 3 RCR(Civil) 85

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: N. Manoharan, for the Appellant; V. Bhiman, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The Petitioner is husband of the Respondent. Their marriage was solemnised on 9.6.2004 at Thanganayaki Amman Kovil Thirumana Mandapam, Arasur, Palladam Taluk. On account of love lost, they got separated and the Petitioner filed a petition in H.M.O.P. No. 9 of 2007 u/s 13(1)(iii)(a) of the Hindu Marriage Act 1955 for dissolution of Marriage. The Respondent filed counter. Pending the hearing, the Respondent filed an application in I.A. No. 812 of 2007 u/s 24 of the Hindu Marriage Act 1955 for interim maintenance from her husband at the rate of Rs. 4,000/- per month and Rs. 5,000/- towards litigation expenses. Pending the hearing of the said petition, this Petitioner filed an application in I.A. No. 2041 of 2008 under Order XVI Rule 1 and 5 and Section 151 of C.P.C., 1908, praying the court to summon and examine a Psychiatrist or doctor working in the department of Psychiatry at Coimbatore Medical College as witness on his side.

2. In the affidavit he has stated that he has filed a petition for dissolution of marriage on the ground that the Respondent has been suffering intermittently from mental disorder. Since the date of marriage, she had not been acting as normal women and her activities were totally abnormal one and she is not for a fit women to lead matrimonial life, that she was taking treatment for the above said disease in Department of Psychiatry, Coimbatore Medical College, Coimbatore and she was admitted there on 18.6.1997 for treatment and till date she is taking medicines, that in the cross examination she has stated that she has not taken any medical examination, that she has been medically treated for her mental disorder and that the examination of the witness viz., Psychiatrist is essential.

3. The above petition was resisted by the Respondent by filing counter, wherein she has stated that the Petitioner has filed a petition under Order 32 Rule 15 C.P.C requesting to the Court to send the Respondent to the Medical Expert to ascertain that she is mentally retarded or not. Even the Court may examine her either in the Court or in the chamber about her mental condition, that this Respondent in her cross examination has stated that she is mentally alright and ready to submit for medical examination, that it is mandatory for the Court to conduct enquiry, that in the main petition it is stated that one Doctor Prof.D. Pradeep treated her. But in the present petition is filed for examining Dr. V. Nandhakumar, Assistant Professor, Ward No. 45, Department of Psychiatry, Coimbatore Medical College Hospital, Coimbatore, and the Petitioner is not definite who has given treatment to the Respondent, that this Respondent has taken treatment neither from Dr. Pradeep nor Dr. V. Nandakumar, that she did not see those doctors and that only to torture the Respondent the petition has been filed.

4. The learned Additional Subordinate Judge, Tiruppur, has dismissed the application by observing that the Court has to verify whether the Respondent is suffering from any mental disorder and the Petitioner without taking such steps, filed the petition for examination of doctor, that he has not filed any application for appointment of guardian for the Respondent and hence he is not entitled for relief. This is the order challenged before this Court.

5. In the divorce petition, it is stated that the Respondent has taken treatment for her mental disorder and was treated by one Dr. D. Pradeep at Ward No. 5, Coimbatore Medical College Hospital. In the present petition, the Petitioner has stated that Dr. Nandakumar, working in the same hospital, has to be summoned by stating that he treated the Respondent. The learned Counsel for the Petitioner would submit that even though Order 32 Rule 15 CPC contemplates enquiry by the Court, the examination of the doctor is not barred.

6. The learned Counsel for the Respondent would submit that without taking steps for enquiry by the Court, the Petitioner is prevented from taking steps to summon a doctor, that the very allegations in the petition for divorce would show that the Respondent is a sane person, that in the petition, it is stated that the Respondent is

his relative and afterwards he says that she suffers from mental disorder and that had he known already that she is mentally retarded woman, he would not have married her and that the present petition is not sustainable.

7. The learned Counsel for the Petitioner, in support of his contention placed reliance upon a decision of the Supreme Court in [Lalit Kishore Vs. Meeru Sharma and Another](#), in which Their Lordships have laid down the law with regard to the order for medical examination in matrimonial cases. The operative portion of the judgment goes thus:

3. ...It is true that the Hindu Marriage Act or any other law governing the field does not contain any express provision empowering the court to issue direction upon a party in a matrimonial proceeding to compel him to submit herself/himself to a medical examination. But, in our view, it does not preclude the court from passing such an order. The court is always empowered to satisfy itself as to whether a party before it suffers from mental illness or not either for the purpose of taking evidence on the ground for which the matrimonial proceeding was started. It is well settled that the primary duty of the court is to see that the truth comes out. Therefore, although the medical examination for a party is not provided in the Act, even then, the court has complete inherent power in an appropriate case u/s 151 of the CPC to pass all orders for doing complete justice to the parties to the suit. In [Sharda Vs. Dharmpal](#), a three-Judge Bench decision of this Court has taken into consideration the power of the court to allow such application for medical examination of a party in a matrimonial proceeding and observed as under:

In certain cases medical examination by the experts in the field may not only be found to be leading to the truth of the matter but may also lead to removal of misunderstanding between the parties. It may bring the parties to terms.

4. In view of the aforesaid decision of this Court and considering the fact that the report of the medical expert would only be an evidence in the proceeding, we do not find any reason why such application for appointment of a medical expert to examine the wife-Respondent cannot be granted.

5. For the reasons aforesaid, the impugned order as well as the order of the Family Court are set aside. The application for appointment of a medical expert for medical examination of the wife-Respondent filed at the instance of the husband-Appellant is thus allowed.

8. Their Lordships after quoting the case of Sharda have held that though medical examination is not specifically provided in the Family Courts Act, even then, the Court has got inherent power in appropriate cases u/s 151 C.P.C, to pass all orders for doing complete justice to the parties.

9. The learned Counsel for the Respondent placed reliance upon a decision of the Supreme Court in AIR 2003 SC 1773 [Kasturi Bai v. Anguri Chaudhary] wherein Their

Lordships after extracting Order 32 Rule 15 C.P.C., have held that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind.

Following is the relevant portion of the judgment:

10. Order 32 Rule 15, CPC reads thus:

15. Rules 1 to 14 (except Rule 2A) to apply to persons of unsound mind. -Rules 1 to 14 (except Rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

11. On a bare perusal of the said provision, it is evident that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provided that even if a person is not so adjudged but is found by court on inquiry to be incapable to protecting his or her interest when suing or being sued or reason of any mental infirmity, an appropriate order thereunder can be passed. The Respondent did not contend that Appellant No. 1 herein is of unsound mind. As noticed hereinbefore, the Respondent herself had filed an application before the trial court for holding an inquiry to the effect that she suffers from mental infirmity.

10. The learned Counsel for the Respondent also cites a decision of this Court in [Balakrishnan Vs. N.B. Balachandran and Another](#), in which it is observed that Order 32 Rule 15 C.P.C is intended to ensure that no man is adjudged a lunatic without proper enquiry, that the Court should hold a judicial enquiry and that it may seek the assistance of medical experts.

11. In another decision relied upon by him in [S. Chattanatha Karayalar Vs. Vaikuntarama Karayalar and Another](#), , this Court after referring to earlier English decisions and a decision of Andhara Pradesh High Court, has observed that, where it is alleged that a party to a suit is of unsound mind, and the other party denies it, the Court must hold a judicial enquiry and come to a definite conclusion as to whether by reason of the unsoundness of mind or mental infirmity, he is incapable of protecting his interest in the suit.

12. It is the stress from the Petitioner's side that truth would come only after proper medical examination. On the side of the Respondent it is argued that before taking steps for medical examination, the Court should have held an enquiry under Order 32 Rule 15 CPC and there is no legal impediment for the Court to order for summoning a medical expert to establish the contention of the Petitioner in the stage of the interlocutory applications. Such examination before the Court might be useful for the main proceedings also. Even afterwards, there is no hindrance for the Court below to hold an enquiry to discharge its function under Order 32 Rule 15 CPC

and it may do it as per the procedure taking aid of the opinion of the medical expert. Presently, summoning of witness need not be prevented and the examination of the doctor who is reported to have been treated the Respondent be conducted and his evidence may enter into record.

13. In the light of the above said observations following the decisions of the Honourable Supreme Court, it is held that the witness be examined and the Court shall take up the enquiry as per Order 32 Rule 15 CPC Hence the order challenged before this Court is liable to be set aside and it is accordingly, set aside. The revision deserves to be allowed.

14. In fine, the Civil Revision Petition is allowed. No costs. Connected M.P. is closed. The trial Court is directed to dispose of the I.A. No. 812 of 2007 preferably within six months from the date of receipt of a copy of this order.