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CMA Nos.700 & 737 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA Nos.700 & 737 of 2021

Malini

..Appellant(s) in both
appeals

Vs

V.Aravindan

..Respondent(s) in both
appeals

C.M.A.No.700 of 2021 is filed against the fair and decretal order dated 31.12.2019 passed in OP.No.1448/2008 on the file of VII Additional Family Court at Chennai

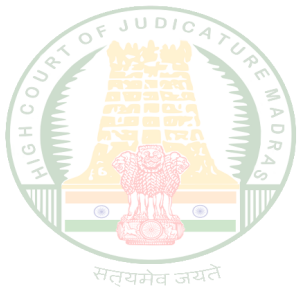
C.M.A.No.737 of 2021 is filed against the fair and decretal order dated 31.12.2019 passed in OP.No.46/2008 on the file of VII Additional Family Court at Chennai.

For Appellant(s):

Mrs.Chitra Sampath,
Senior Counsel,
for Mr.T.S.Baskaran

For Respondent(s):

Mr.G.Suryanarayanan



JUDGMENT

WEB COPY (Judgment of the Court was delivered by C.V.Karthikeyan J.)

The respondent in O.P.No.46 of 2008 on the file of VII Additional Family Court, Chennai, who was the petitioner in O.P.No.1448 of 2008 again on the file of the same Court, has filed the present two appeals, aggrieved by the common judgment in O.P.Nos.46 and 1448 of 2008, dated 31.12.2019.

2. O.P.No.46 of 2008 had been filed by the husband, respondent herein, seeking a judgment and decree to annul the marriage solemnised between him and his wife, appellant herein, on 25.10.2006, on the ground of non consummation of marriage due to impotency of the wife/appellant.

3. O.P.No.1448 of 2008 had been filed by the wife, appellant herein, under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights, to resume the marital life with the respondent herein.

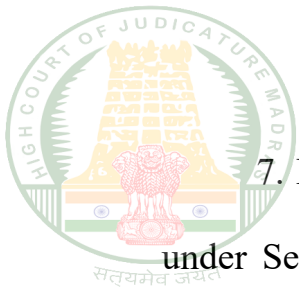
4. By common order, dated 31.12.2019, O.P.No.46 of 2008 was decreed and the marriage between the appellant and the respondent was annulled, while O.P.No.1448 of 2008 was dismissed. This common order necessitated the filing of the present two appeals.

5. In O.P.No.46 of 2008, which had been filed under Section 12 (1) (a) of the Hindu Marriage Act, 1955, it was contended by the respondent herein that the marriage between him and the appellant took place on 25.10.2006 and that they both knew each other even before the marriage. It was also contended that



the marriage was not consummated due to the impotency and abnormal behaviour of the appellant herein. It was further contended that the appellant's behaviour was strange and she avoided cohabitation citing medical grounds. It was also contended that the appellant rejected cohabitation even on the first night of the marriage, raising flimsy grounds. It was contended that there was an inherent defect of impotency on the appellant and an acute inferiority complex had been developed in her behaviour towards the respondent herein. It was also stated that owing to this, the respondent herein was put to unusual stress and was subjected to nervousness, due to which he underwent treatment. It was further contended that both of them went to a Psychiatrist - Dr.Rudharan. It was also contended that the marriage was not consummated and the appellant was responsible for the same and, therefore, alleging that she was impotent, the petition had been presented under Section 12 (1) (a) of the Hindu Marriage Act,1955, seeking a direction to declare the marriage as null.

6. The appellant herein, filed a counter affidavit, denying and disputing all these contentions. She stated that it was the respondent herein, who was abnormal and psychic in nature. It was also contended that the respondent underwent psychiatric treatment, which was not revealed prior to the marriage. She further stated that though Dr.Rudharan was consulted, it was only to assess the respondent about his problems. She also contended that the respondent had a suicidal mentality.

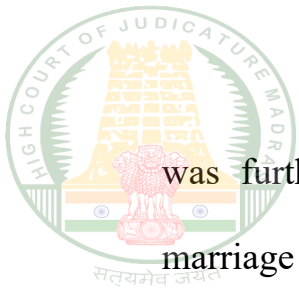


7. In O.P.No.1448 of 2008, which had been filed by the appellant herein under Section 9 of the Hindu Marriage Act, she contended that even though there were differences between them, she still sought restitution of conjugal rights and was interested in living with the respondent.

8. In his counter to the said petition, the respondent herein raised the same allegations, which he had stated in O.P.No.46 of 2008, alleging that the appellant was not capable of living a normal marital life and therefore he was not interested in leading a marital life with her.

9. Both the petitions were taken up for joint trial and a common order was pronounced on 31.12.2019 by the VII Additional Family Court, Chennai. The learned Family Court Judge, after examining the evidence adduced on both sides, observed that on 22.12.2007, the appellant herein had returned to the matrimonial home after prolonged stay at her relatives place, opened the bed room, called the respondent inside and closed the door with a huge bang, dragged the respondent to the bed, sat on him forcibly, and started to strangle him with her hands. This incident was stated to be a triggering factor for the respondent herein to initiate further proceedings against the appellant.

10. The learned trial Court Judge, after narrating the above said incident, examined the evidence adduced by both the parties. The evidence of the respondent, who had been examined as P.W.1, was taken note of. It was observed that it was the appellant herein, who did not cooperate in leading a normal marital life with the respondent and to cohabit with him. The evidence



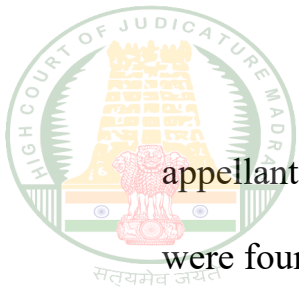
was further examined and it was observed that non-consummation of the marriage was only owing to the non-cooperation of the appellant herein and that fact had caused grave mental agony, leading to breakdown of the respondent. Holding as above, O.P.No.46 of 2008 was allowed, thereby annulling the marriage between the parties, and O.P.No.1448 of 2008 was dismissed.

11. Heard Mrs.Chitra Sampath, learned Senior Counsel, for the appellant; and Mr.G.Suryanarayanan, learned counsel for the respondent, in both the appeals.

12. Mrs.Chitra Sampath, learned Senior Counsel, for the appellant took the Court through the facts of the case and the evidence adduced. It was pointed out by the learned Senior Counsel that both the parties had produced reports of the tests conducted by the doctors, relating to impotency, and both the tests gave a finding that both the parties were capable of leading a normal life and both were potent. She then pointed out the cross-examination of the respondent, wherein he had stated that he would often get a nervous breakdown and fits and was taking medicines for the same.

13. The doctor, examined on behalf of the respondent as P.W.2, also stated that if somebody takes medicines for depression or anxiety or fits, or such related ailments, would normally result in epilepsy.

14. The report of the doctor examined on behalf of the appellant herein was also pointed by the learned Senior Counsel which stated that the appellant was normal. The evidence of the doctor very clearly pointed out that the



appellant was capable of giving birth to children and no physical infirmities were found during the examination.

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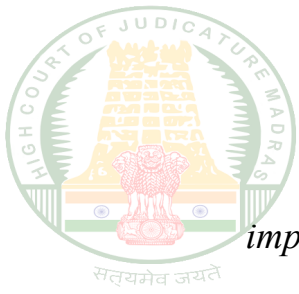
15. Conversely, Mr.G.Suryanarayanan, learned counsel for the respondent, pointed out the very same exhibits and contended that as per the evidence adduced by the doctors they had returned a definite finding that the respondent was potent. He pointed out the Medical Certificate of the appellant herein and contended that a finger test was done with difficulty and thereby called upon the Court to infer that the appellant was not capable of consummation.

16. We have carefully considered the arguments advanced and perused the materials available on record.

17. It is on record that the appellant and the respondents were collegemates and, on coming to know each other, with consent, they married. The marriage was solemnised on 25.10.2006. They were both at quite an impressionable age of 25 years. However, they were not able to lead a normal and happy married life. It is also on record that the respondent herein, prior to marriage, developed nervous break down, leading to affliction of fits and for that he had to take medicines continuously for six months.

18. Section 12 (1) (a) of the Hindu Marriage Act,1955, is as follows :

12. (1) Any marriage solemnised, 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) that the marriage has not been consummated owing to the impotence of the respondent.

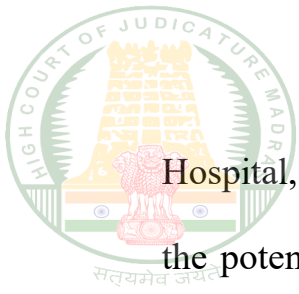
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19. The marriage can be declared null and void under the above provision only when it is proved that the respondent in the Original Petition was impotent and continued to be impotent during the course of marriage and till the institution of the proceedings. Naturally, the burden to prove such fact is only on the petitioner who initiates such proceedings, in this case by the respondent herein, who filed the petition seeking such declaration.

20. It is also to be pointed out that a petitioner, who files a petition under Section 12 (1) (a) of the Hindu Marriage Act, 1955, cannot take advantage of his own wrong if it was found that he was also unfit to a little degree or some degree of consummating the marriage. It would require, quite apart from establishing that the respondent in the Original Petition was impotent, but also that the petitioner who initiates the proceedings is potent. Both the parties, in their evidence, had levelled various allegations against each other, which are irrelevant so far as this particular provision is concerned.

21. We therefore, have to necessarily examine the medical reports of both the appellant and the respondent issued by the medical professionals, who had examined both of them.

22. The respondent/husband was examined by P.W.2 Dr.R.Jeyaraman, MS., M.Ch. (Urology), who was working in Rajiv Gandhi Government General



Hospital, Chennai, and was also one of the Members of the Board, who assessed the potency of the respondent. The Certificate issued by P.W.2 is extracted as below :

“As per our clinical examination and investigations, his potency appears to be normal. However, selective impotence cannot be ruled out.”

The doctor had stated that the potency of the respondent/husband appeared normal. However, a word of caution had also been added that there could be selective impotence. The words “*selective impotence*” have been further qualified during his cross-examination. In his cross-examination, the doctor had stated as follows :

இந்த குறையினால் மனைவியிடம் தாம்பத்ய உறவு, கொள்ள முடியாத நிலை ஏற்பட வாய்ப்புண்டு. வலிப்பு, ஏற்படும் நபர்களுக்கு சாதாரணமாக தாம்பத்ய உறவின் போது அவர் உட்கொள்ளும் மாத்திரைகள் காரணமாக விரைப்பு தன்மை குறைவதற்கு வாய்ப்புண்டு. மன அழுத்தம் உள்ளவர்களுக்கு மாத்திரை காரணமாகதான் உறவு கொள்ள விரைப்பு தன்மை குறைய வாய்ப்புள்ளது.

The doctor had stated that owing to “*selective impotency*”, there would be instances when the respondent herein would not have normal physical relationship with his wife. He further stated that potency would reduce for those who are afflicted with fits or epilepsy or hypertension and are taking drugs for the same or for mental stress. This is the report about the potency of the respondent herein.

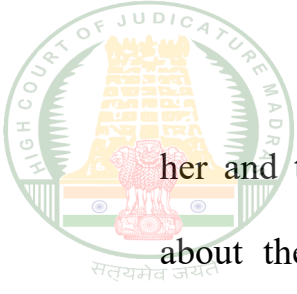


23. The report of the appellant herein was also produced as a document and the same had been marked as Ex.R-2. This again had been issued by the Medical Education Department. Both the doctors, who had signed the Certificate, namely, Dr.Baby Vasumathi, M.D., DGO., Prof. of O & G, Senior Civil Surgeon, Institute of Social Obstetrics and Govt. Kasturba Gandhi Hospital for Women & Children, Chennai – 600 005, and Dr.Ramani Rajendran, M.D., DGO., Prof. of O & G, Senior Civil Surgeon, Institute of Social Obstetrics and Govt. Kasturba Gandhi Hospital for Women & Children, Chennai – 600 005, had been examined as witnesses.

24. Even before going into the Certificate, it would be proper to examine the evidence of both the medical professionals. Dr.Baby Vasumathi was examined as R.W.2. In her chief-examination, she stated as follows :

அதன் படி நான் பரிசோதித்தேன். அந்த சோதனையின் படி நான் கண்டறிந்தவை 1) மாலினி என்பவருக்கு மாதவிடாய் சரியாக உள்ளது, 2) பெண்மைக்குரிய அனைத்து அம்சங்களும் சரியாக இருந்தது, 3) கருவறுவதற்கான கருகுழாய் மற்றும் கருப்பை நல்ல நிலையில் இருந்தது. தாய்மை அடைந்தால் குழந்தை உண்டாக வாய்ப்பு உள்ளது.

25. A rough translation would be that the appellant herein was normal biologically with normal ovaries, uterus and with capacity to beget children. During her cross-examination, the witness stated that when she examined the appellant, the appellant informed that there had been no cohabitation between



her and the respondent herein. Thereafter, the doctor also specifically stated about the test conducted by her. In her cross-examination, she stated as follows :

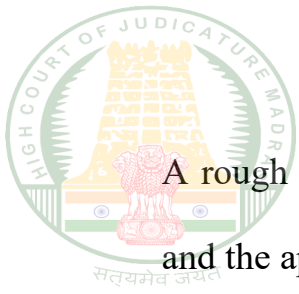
मालिनियिनं उदलत्तनंमैक्कु ஒரு विरलं வைத்து பரிசோதித்தேன். அவருக்கு இரண்டு விரலாய் பயன்படுத்தக்கூடிய அளவிற்கு உடல் உறுப்பு அனுமதிக்கவில்லை. மாலினியின் வெஜ்ஜைனா அளவு எதுவும் எடுக்கவில்லை. அது நார்மலாக இருந்தது. மாலினிக்கு ஒவரீஸ் மற்றும் கருப்பை நார்மலாக இருந்தது.

A rough translation would be that the witness performed a single finger test. There was difficulty in doing the two finger test. The vagina, ovaries and uterus were normal.

26. The evidence that was pointed by the learned counsel for the respondent, but, however, was different in doing the two finger test. The further statement has to be taken into consideration that the vagina was normal and the ovaries and uterus were also normal.

27. In her evidence, Dr.Ramani Rajendran, who was examined as R.W.3, stated in her chief-examination as follows :

मालिनिक्कु பொது மருத்துவ பரிசோதனை மற்றும் மகப்பேறு பரிசோதனை, அல்ட்ரா சவுண்ட் பரிசோதனை செய்யப்பட்டது. நாங்கள் பார்த்த பரிசோதனையில் மாலினிக்கு குழந்தை பெறுவதற்கு முழு தகுதி இருந்தது உடலுறுப்புகளில் எந்த குறையும் இல்லை.



A rough translation would be that general test and ultra sound scan were done and the appellant was fully capable of begetting children.

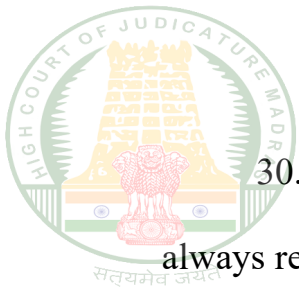
In her cross-examination, she asserted as follows:

அவர்களுடைய வெளி உடல் உறுப்புகளை வைத்து சாதாரணமாக உடல்உறுவுக்கு தகுதியானவல் என்று கூறியுள்ளோம்.

A rough translation would be that she was capable of normal intercourse.

28. Learned counsel for the respondent pointed out the evidence that there was difficulty in admitting one finger in the vagina, but, that statement has been explained by R.W.2, doctor, that it was still observed that the appellant had normal ovaries and uterus and that she was fit for physical relationship and begetting children. This fact has been asserted by both the doctors.

29. It is also seen from the evidence that the respondent had stated that he had withdrawn himself from the companionship of the appellant and had taken treatment and continues to take treatment. He was also afflicted with fits and hypertension and had to necessarily take drugs for the same. It had also been recorded by the trial Judge that even when the respondent was deposing before the Court, he suffered from fits. This fact is also to be noted in conjunction with the evidence of P.W.2, doctor, who stated that when somebody takes drugs for epilepsy or fits or hypertension or to relieve mental stress, his/her potency value would reduce.



30. On the other hand, the evidence of the appellant was that she was always ready and willing to live with the respondent herein. The respondent was advised to undertake psychiatric treatment and he underwent such treatment.

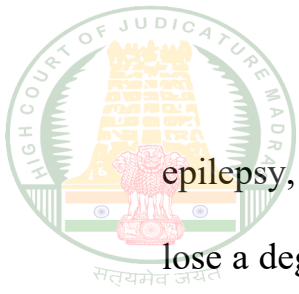
31. The provision of law will now have to be reiterated that the marriage could be declared to be a nullity on the ground of impotency of the respondent to the Original Petition.

32. A reference had been made during arguments to the decision of the Hon'ble Supreme Court in *Yuvraj Digvijay Sinhji v. Yuvrani Pratap Kumari*, (1969) 2 Supreme Court Cases 279, wherein, it had been held as follows :

“A party is impotent if his or her mental or physical condition makes consummation of the marriage a practical impossibility. In order to entitle the appellant to obtain a decree of nullity, he will have to establish that his wife was impotent at the time of the marriage and continued to be so until the institution of the proceedings.”

33. In the instant case, no such evidence had been adduced or established by the respondent herein during trial. Both the parties had withdrawn from each other's companionship for various other reasons also, but not on the ground that the marriage was not consummated. Neither of them was impotent.

34. We hold that the reasons advanced for such withdrawal by the appellant are more probable than that of the respondent. The fact remains that the respondent had been taking treatment and taking drugs for affliction of



epilepsy, fits and also mental stress, which could be a possible cause for him to lose a degree of potency. The psychiatric treatment may also result in “*selective impotency*”.

35. For the above reasons, we hold that the judgment and decree of the trial Court necessarily has to be interfered with. The learned trial Judge had not properly appreciated the medical evidence adduced, particularly the Certificates produced. The Certificates issued after medical examination will necessarily have to be given due weightage. The trial Judge had failed to do so. Therefore, the judgment and decree impugned herein are set aside.

36. The Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected C.M.P.No.4219 of 2021 is closed.

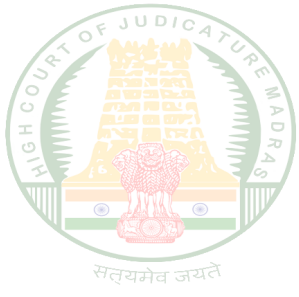
(C.V.K.,J.) (K.R.S.,J.)
09-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

DIXIT

To

VII Additional Family Judge,
Chennai.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

DIXIT

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