

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 25TH DAY OF SEPTEMBER 2020 / 3RD ASWINA, 1942

Mat.Appeal.No.734 OF 2012

AGAINST THE ORDER IN OP No.1126/2012 DATED 07-09-2012 OF
FAMILY COURT, IRINJALAKUDA

APPELLANTS/RESPONDENTS :

- 1 AJITHA, AGED 27 YEARS,
D/O.LATE VELAYUDHAN, KIZHAKKANATTU VEETIL,
PAZHOOKKARA DESOM, ANNALLUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
- 2 CHANDRIKA, AGED 46 YEARS,
D/O. LATE VELAYUDHAN, & W/O. BHASKARAN,
MULANGILL HOUSE, MELADOOR P.O., ALATHUR
VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
- 3 THANKAMANI, AGED 44 YEARS,
D/O. LATE VELAYUDHAN, & W/O. SUBRAN, THEKUDAN
HOUSE, KODASSERY P.O., ALATHUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
- 4 GIRIJA, AGED 38 YEARS,
D/O. LATE VELAYUDHAN, KIZHAKKANATTU VEETIL,
PAZHOOKKARA DESOM, ANNALLUR VILLAGE, THRISSUR
DISTRICT.
- 5 LALITHA,
AGED 36 YEARS
D/O. LATE VELAYUDHAN, & W/O. KARTHIKEYAN,
ILLATHUPARAMBIL HOUSE, KONATHUKUNNU P.O.,
THEKKUMKARA VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

Mat. Appeal No. 734 & connection

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6 SUNITHA,
 AGED 30 YEARS
 D/O. LATE VELAYUDHAN, & W/O. MOHANAN,
 THAIPARAMBIL HOUSE, VARAKARA P.O., AMBALLUR
 VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

7 SUNIL,
 AGED 28 YEARS,
 KIZHAKKANATTU VEETIL, PAZHOOKKARA DESOM,
 ANNALLUR VILLAGE, MUKUNDAPURAM TALUK, THRISSUR
 DISTRICT.

BY ADVS.
SMT.M.R.JAYALATHA
SMT.K.VINAYA

RESPONDENT/PETITIONER:

HARSHAN,
43 YEARS,
S/O. LATE GOVINDHAN, THEKKUDAN HOUSE, KUNDAI
DESOM, ANNALLUR VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, PIN-680 731.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
23-01-2020, ALONG WITH Mat.Appeal.743/2012,
Mat.Appeal.744/2012 & RPFC.261/2012, THE COURT ON 25-09-
2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 25TH DAY OF SEPTEMBER 2020 / 3RD ASWINA, 1942

Mat. Appeal. No. 743 OF 2012

AGAINST THE ORDER IN OP NO. 242/2012 DATED 07-09-2012 OF FAMILY
COURT, IRINJALAKUDA

APPELLANT/PETITIONER:

AJITHA,
AGED 27 YEARS,
D/O. LATE VELAYUDHAN, KIZHAKKANATTU VEETIL,
PAZHOKKARA DESOM, ANNALLUR VILLAGE, MUKUNDAPURAM
TALUK, THRISSUR DISTRICT.

BY ADVS.
SMT. M. R. JAYALATHA
SMT. K. VINAYA

RESPONDENT/RESPONDENT:

HARSHAN,
AGED 43 YEARS,
S/O. LATE GOVINDHAN, THEKKUDAN HOUSE, KUNDAI DESOM,
ANNALLUR VILLAGE, MUKUNDAPURAM TALUK, ANNALLUR
P.O., THRISSUR DISTRICT, PIN -691 585.

BY ADV. SRI. G. SREEKUMAR (CHELUR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
23-01-2020, ALONG WITH Mat. Appeal. 734/2012,
Mat. Appeal. 744/2012 & RPFC. 261/2012, THE COURT ON 25-09-2020
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 25TH DAY OF SEPTEMBER 2020 / 3RD ASWINA, 1942

Mat. Appeal. No. 744 OF 2012

AGAINST THE ORDER IN OP NO. 1128/2012 DATED 07-09-2012 OF
FAMILY COURT, IRINJALAKUDA

APPELLANT/RESPONDENT:

AJITHA, AGED 27 YEARS,
D/O. LATE VELAYUDHAN, KIZHAKKANATTU VEETIL,
PAZHOKKARA DESOM, ANNALLUR VILLAGE, MUKUNDAPURAM
TALUK, THRISSUR DISTRICT.

BY ADVS.
SMT. M. R. JAYALATHA
SMT. K. VINAYA

RESPONDENT/PETITIONER:

HARSHAN, 43 YEARS,
S/O. LATE GOVINDHAN, THEKKUDAN HOUSE, KUNDAI DESOM,
ANNALLUR VILLAGE, MUKUNDAPURAM TALUK, THRISSUR
DISTRICT, PIN - 691 585.

BY ADV. SRI. G. SREEKUMAR (CHELUR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
23-01-2020, ALONG WITH Mat. Appeal. 734/2012,
Mat. Appeal. 743/2012, RPFC. 261/2012, THE COURT ON 25-09-2020
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 25TH DAY OF SEPTEMBER 2020 / 3RD ASWINA, 1942

RPFC.No.261 OF 2012

AGAINST THE ORDER IN MC 71/2012 OF FAMILY COURT, IRINJALAKUDA

REVISION PETITIONER/PETITIONER:

AJITHA,
AGED 27 YEARS,
D/O. LATE VELAYUDHAN, KIZHAKKANATTU VEETIL,
PAZHOKKARA DESOM, ANNALLUR VILLAGE, MUKUNDAPURAM
TALUK, THRISSUR DISTRICT.

BY ADVS.
SMT.M.R.JAYALATHA
SMT.K.VINAYA

RESPONDENT/RESPONDENT:

HARSHAN,
AGED 43 YEARS,
S/O. LATE GOVINDHAN, THEKKUDAN HOUSE, KUNDAI
DESOM, ANNALLUR VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, PIN-691585.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 23-01-2020, ALONG WITH Mat.Appeal.734/2012,
Mat.Appeal.743/2012 & Mat.Appeal.744/2012, THE COURT ON
25-09-2020 PASSED THE FOLLOWING:

A.M. SHAFFIQUE & MARY JOSEPH, JJ.

Mat. Appeal Nos. 734/2012, 743/2012, 744/2012
and
R.P(FC) No. 261/2012

Dated this the 25th day of September, 2020

JUDGMENT

Mary Joseph, J:

Original Petition No. 1126 of 2012 was filed by the husband seeking for perpetual injunction restraining the respondents and their men from trespassing into the petition schedule property and general damages for the loss suffered. O.P No.1128 of 2012 was filed by the husband seeking to declare the marriage between himself and the respondent null and void, for the reason that it was not consummated due to the heart ailment of the wife, suppressing which factum the consent for marriage was obtained and it was solemnized. O.P No.242 of 2012 was filed by the wife seeking to get back money and gold ornaments given to her at the time of marriage, taken custody of and misappropriated by her husband. M.C No.71 of 2012 was also filed by the wife seeking monthly maintenance from her husband under Section 125 Cr.P.C. O.P No.1128/2012 and O.P No.1126/2012 filed by the husband were allowed granting orders respectively declaring the marriage as null and void and

directing to pay general damages to the tune of Rs.10,000/- with interest at the rate of 12% from the date of the petition. O.P No.242 of 2012 and M.C No.71 of 2012 filed by the wife respectively seeking for return of gold ornaments and monthly maintenance were dismissed.

2. Aggrieved by the orders issued, the wife has preferred the appeals as above. According to Smt. M.R Jayalatha, the learned counsel for the appellant, the impugned order relating to O.P No.1128 of 2012 was passed by Family Court, Irinjalakuda without appreciating the evidence in its proper perspective.

3. According to her, apart from the oral evidence of RW1 denying consummation of marriage, independent evidence was not adduced in support thereof. According to her, medical practitioners having expertise on the subject had not spoken that the lady is fully incapacitated to conceive, but only about the risk involved in conception and therefore, the Family court ought not to have arrived at a finding that the marriage was not consummated.

4. According to her, unlike in a criminal case the petitioner in a civil case need only to bring in evidence some preponderance of probabilities but, the Family Court in total negation of that factum, wrongly cast the burden on the lady to prove her case beyond all reasonable doubt. Before delving on contentions as above, the facts of

the case is summarised hereunder:

The parents of the husband invited alliance for him in the year 2004 and the proposal from the wife was brought to him through a broker. After discussion and negotiations, the marriage was solemnized on 28.03.2004 at Guruvayoor Temple as per the custom prevalent in the Hindu community. After the marriage, the wife resided with the husband at his residence. From initial days of marital life itself, the wife behaved extraordinarily. She was always on medication and the consequence was well reflected in her conduct. She was unable to have sexual intercourse due to consumption of heavy dosage of powerful medicines. The husband took the wife to a Gynaecologist at Carmel Hospital, Aluva and during the course of consultation, she informed the doctor that she is suffering from some heart disease. The Doctor then referred her to the Cardiologist for better management. The husband came to know about the illness of the wife only at the time of consultation with the Gynaecologist in the year 2005. It was disclosed to him that the wife is suffering from acute Rheumatic heart disease, grossly dilated left atrium, mild mitral stenosis, severe mitral regurgitation, mild pulmonary artery hypotension and thrombosis inside the left ventricle. It was also informed that she had underwent balloonoplasty at Amritha Institute of Medical Sciences and Research Centre at Ernakulam in the year 1998

and since then was taking anticoagulant tablets for maintaining free flow of blood without formation of clots. He was also made aware that his wife is incapacitated to have sexual intercourse and to conceive. Due to the anticoagulant tablets taken by her, every possibility was also there for the foetus in the womb to be deformed. Until the submission of the wife to the medical examination in the year 2005, the husband was not aware of her illness. The factum of illness was also concealed from the notice of her husband. Therefore, he maintained the impression that she is a normal woman capable of leading a normal married life. According to the husband, if the factum of ailment was revealed to him, he would not have consented for the marriage. Therefore, alleging that his consent for the marriage was obtained by fraud and it was not consummated due to the incapacity originated from the ailments suffered by the lady, O.P.No. 1128/2012 was filed seeking for declaring the marriage as null and void. O.P.No.1126/2012 was also filed claiming damages for the loss resulted from degradation of his status in the society in view of declaration of marriage as null and void, purchase of Thali chain of 5 sovereigns and dresses and for the expenses incurred for the reception in connection with the marriage. According to him, though he had requested for a settlement of the disputes and arrived at one reasonably, the wife attempted to topple down the same by vigorously influencing

the Police and the S.N.D.P Yogam. They also trespassed into the house of the husband on 06.10.2005 to defeat the settlement. The petition schedule property is exclusively owned by the husband by virtue of deed No.726/1986 of S.R.O, Mala. Therefore, alleging that his right to possess and enjoy the property exclusively has been interfered with by the wife and relatives, Original Petition was filed seeking to restrain them and the men related to them, from trespassing into the petition schedule property.

5. In the objection filed, the averments except those specifically admitted were denied by the wife. It was contended that the marriage was arranged after duly transpiring information about the ailment suffered by her. The marriage was consummated and her ailment never formed a reason to defeat it. The husband had told severally that he married her only to attend the needs of his aged mother and to take care of her. He also found fault with and used to assault her. On one occasion, he abandoned her at Mala Police Station. Herself or her men never trespassed into the property of the husband as alleged by him. According to her, she was married only for availing monetary benefits.

6. O.P No.242/2012 was filed by the wife seeking return of gold ornaments and money. As disclosed from the averments, she was given 19 1/2 sovereigns of gold ornaments and cash of Rs.1,00,000/-. Out of the

cash, Rs.50,000/- was deposited in Bank of Baroda, Ashtamichira Branch and the rest of the amount as well as the entire gold ornaments were entrusted to the husband as a trustee. The husband, who was a drunkard, had spent the money as well as the gold ornaments for meeting his own needs. The wife was insulted by him stating that the marriage was solely for getting a care taker for his aged mother. After a few days of marriage, quarrels ensued at the instance of the husband. After the death of the mother on 27.07.2004, she was taken to a Gynaecologist by her husband and therefrom she was referred to a Cardiologist. It was opined by the Cardiologist that the wife is quite normal to lead a married life. As the relationship got strained, a complaint was filed by the husband at Mala Police Station alleging that the wife had attempted to commit suicide. Both were called to the police station and the husband left the place after abandoning her there. The relatives of the wife were informed by the Police and she was taken back home. Wife visited the matrimonial home to get back her belongings, following which, complaints were filed by the husband before the Police Station as well as the S.N.D.P Yogam, Mala. Thereafter, some of the articles were returned to the wife by the husband and they had also agreed mutually to separate from the marital relationship. Thereupon the petitioner was constrained to file a petition seeking to recover Rs.50,000/- with interest and gold

ornaments weighing 19 1/2 sovereigns or its value from the husband. Finding herself unable to maintain and meet the expenses of treatment necessitated from the physical torture suffered from her husband, Rs.1500/- was also sought as monthly maintenance.

7. The respondent filed counter statement in the above Original Petition stating that the marriage has not been consummated, that the consent for the marriage being obtained by fraud, the marriage is vitiated and that the marriage being solemnized without disclosing the Cardiac ailment of the wife, is null and void. The husband took a stand of non-acquaintance about the gold ornaments and cash brought by the wife at the time of marriage and denial of entrustment of those to him. According to him, the parties have agreed for divorce by mutual consent and also for return of the articles but, after obtaining the articles, the wife withdrew from her consent for divorce. It was thus contended that no articles of her are left with the husband to be returned.

8. M.C.No.71/2012 is a petition filed by the wife under Section 125 Cr.P.C seeking maintenance. Her claim was that she is unable to maintain on her own and therefore, is entitled to get Rs.2,500/- monthly as maintenance from her husband from 30.08.2005.

9. In the objection filed in the M.C, contentions were raised to the effect that the marriage is vitiated as his consent for that was

obtained by fraud, that the wife is incapacitated due to her heart ailment to discharge the marital obligations and also to conceive and therefore, the marriage is null and void and he is not obliged legally to maintain the lady.

10. All petitions were tried jointly by the Family Court. Evidence was adduced in O.P No.1128/2012, treating it as the leading case. On the petitioner's side, PWs 1 to 10 were examined. RW1 alone was examined on the side of the respondent. Exts. A1 to A15, B1 and B2 and X1 and X2 were also marked in evidence.

11. After appreciation of the entire evidence, the Family Court allowed O.P No.1128/2012 and passed a decree in favour of the husband declaring the marriage solemnized on 28.03.2004 as null and void. O.P No.1126/2012, filed by the husband was also allowed granting a decree for general damages to the tune of Rs.10,000/- from all the respondents with interest at the rate of 12% per annum from the date of the petition. O.P No.242/2012 and M.C No.71/2012 filed by the wife were dismissed. Mat. Appeal No.734/2012 was filed by the wife and others challenging the decree passed in favour of the petitioner in O.P No.1126/2012. The wife has also filed Mat Appeal No.743/2012, challenging the order dismissing O.P No.242/2012. Mat Appeal No.744/2012, was filed by the wife challenging the order in O.P No.1128/2012, granting a decree

declaring the marriage as null and void. R.P.(F.C) No. 261/2012 was filed by the wife against the order passed in M.C No. 71/2012, dismissing the same and declining to grant maintenance to her.

12. From the oral evidence tendered by the medical practitioners examined by the husband as PW2 and PW3, it is established that the wife had cardiac problems prior to her marriage with the respondent itself. The husband as PW1 has also stated categorically that himself or his relatives were not informed by either the wife or the people attached to her about her cardiac ailments. According to PW1 the cardiac ailments of his wife was brought to his notice only during the medical examination held in the year 2005. According to him, the marriage could not be consummated due to the cardiac problems. According to him, had he been informed about the cardiac ailments of the wife prior to the marriage, consent for the marriage would not have been given by him. Therefore, his specific case was that fraud was played upon him by his wife and her relatives, while getting the marriage arranged and solemnized. According to him, the declaration that the marriage is null and void is also obtained for the reason. PW1 caused the production of Ext.X1 through PW2, the Medical Superintendent of Carmel Hospital, Aluva. Ext.X1 is nothing but the case file relating to the treatment of the lady. The Senior Consultant Cardiologist of Carmel Hospital, Aluva was

also examined as PW3. She deposed that the wife was suffering from severe heart disease. She also explained the difficulties associated with the cardiac illness and the need for taking anticoagulant medicines to prevent clotting of blood impacted from the cardiac disease. PW3 has also opined that it was not advisable for a patient having moderate mitral stenosis to involve in sexual intercourse. According to her, pregnancy will be an extra load to the cardio vascular system and there is chance for the moderate mitral stenosis to become worse during delivery. PW3 has also stated about the reference of the wife to Sree Chithira Medical Centre, Thiruvananthapuram. Ext.A3 is the reference letter issued by PW3. But, against the reference, the wife went to Amritha Hospital and underwent further treatment there. PW4, the Cardio-thoracic Surgeon of Amritha Institute of Medical Sciences and Research Centre, Ernakulam was also examined by the husband, who apprised the court about the balloon mitral valvotomy and balloonoplasty undergone by the wife on 28.12.1998. The date of surgery precedes the date on which the marriage was held and therefore there is absolutely no scope for a doubt to arise that the lady had been suffering from heart ailments prior to the marriage itself. The Medical Records pertaining to the lady's treatment under PW4 are also produced and marked in evidence as Ext.X2. It is established therefrom that she was a heart patient prior to the marriage itself and was undergoing

treatment under PW4 since 2005. Therefore, it has come out from the oral evidence of PW1 and the medical evidence tendered by PW2 to PW4 that the wife was suffering from Cardiac problems prior to the marriage itself and was under medication for that. It has also come out that in view of the cardiac ailments, she is unable to perform the marital obligations to her husband and also to pro-create children. PW1's evidence that he was informed firstly about the heart ailments of his wife only in the year 2005 was also not controverted by the wife during cross examination. She did not even attempt to convince the court that the husband was informed of her ailments prior to the marriage itself.

13. In the above scenario, we are constrained to take a view that without revealing the cardiac ailments the wife had, the consent of the husband for marriage was obtained. The suppression of a material factum like the one on hand, is undoubtedly a foul play and nothing short of fraud. PW1 had also stated that had he been informed of the cardiac ailments of the lady prior to the marriage, he would not have consented for the same. Therefore, the evidence available is sufficient to take a view that the consent of the husband for the marriage was obtained by playing fraud on him. We see no reason to find fault with the Family Court in granting a decree declaring the marriage as null and void on the strength of the evidence already discussed with. The decree

under challenge is liable to be sustained for the reasons stated above and the Mat Appeal challenging the same fails.

14. In O.P No.1126/2012, an order was passed in favour of the husband allowing Rs.10,000/- as damages. In view of the cogent and convincing evidence adduced by the husband to establish that the Cardiac disease with which the wife was suffering from was suppressed and his consent for marriage was obtained by fraud, there was every reason for the claim made by the husband for damages to succeed. Husband had claimed a sum of Rs.3,40,000/- as compensation for the damages sustained by him for non consummation of marriage with the lady. But there was dearth of evidence to quantify the damages. However, the Family Court has allowed the husband to realise Rs.10,000/- with interest at the rate of 12% per annum from the wife. The husband has not raised any challenge against the meagreness and the unreasonableness of the sum ordered as compensation. In view of the decree passed by the Family Court declaring the marriage null and void, there is every reason to hold that the husband is entitled to get damages for the loss sustained by him. The Family Court has ordered only a meagre sum as damages and the challenge now raised by the wife against has no legs to stand in the context and the appeal fails for the reason.

15. In O.P No.242/2012, the Family Court has declined the prayer of the wife for getting back the money and gold ornaments given to the husband at the time of marriage for the reason that cogent and convincing evidence supportive there of have not been adduced by her. The husband has denied the claim made by the wife in toto. Therefore, it is incumbent upon the wife to adduce cogent evidence to establish her claim. The evidence adduced by the wife is not adequate and convincing to maintain the claim. Though she had raised a claim for return of articles, after a scrutiny of Ext.A6 we are constrained to take a view that all articles belonging to the wife were already received by her from the husband. It is disclosed therefrom that the entire articles belonging to the wife were returned by the respondent following a settlement arrived at the S.N.D.P Yogam. Ext.A15 is the minutes of the Yogam on that count and Ext.A6 is a receipt produced by the wife.

16. True that Ext.A6 is only a photocopy, but its execution was not disputed by the husband. Therefore, there is no reason to discard Ext.A6. Ext.B2 photograph is produced but it can be relied on only to establish that the lady had worn gold ornaments and will not help to establish her claim that gold ornaments of her were entrusted to the husband. There is dearth of evidence to take a view either that the ornaments worn were gold or that the quantum is 19½ sovereigns.

Therefore, we are not in a position to take a view either that the ornaments worn are gold or its weight is 19½ sovereigns. For want of any independent evidence to support her solitary version regarding entrustment, we are also handicapped to take an affirmative view in that regard. The solitary version of PW1 that Rs.50,000/- was entrusted to the husband after the marriage also deserves to be discarded for want of reliable independent evidence. Moreover, the oral evidence of PW5 to PW10 alongwith the documentary evidence of Ext.A6 and A15 would drive us to take a view on the contrary that the entire articles belonging to the wife and brought by her to the matrimonial home after marriage had been returned to her. For the foregoing reasons, the claim for return of gold ornaments and money is only to be disallowed. The Family Court has arrived at a finding against the wife by disallowing her claim. In our appreciation of evidence also, we find ourselves justified to take the same view.

17. In M.C No.71/2012, the claim of the wife for monthly maintenance was declined by the Family Court for want of a valid marriage. Since the marriage was declared as null and void, the lady cannot claim the status of a wife so as to be entitled to raise a claim for maintenance. In the above scenario, the claim for past and future maintenance at the rate of Rs.1,500/- and monthly maintenance at the

rate of Rs.2,500/- was declined by the Family Court by dismissing the claim made by the petitioner in O.P No.242/2012 and M.C No.71/2012.

18. The arguments advanced by the wife to get a reversal of the impugned common order being untenable ones, we are constrained to discard those. Mat. Appeals and R.P(FC) are liable to fail for the reason.

In the result, Mat Appeals and R.P(FC) are dismissed and parties are directed to suffer their respective costs.

Sd/-
A.M.SHAFIQU
Judge

Sd/-
MARY JOSEPH
Judge

JJ