

Swarajya Lakshmi

Vs

Dr. G. G. Padma Rao

Civil Appeal No. 2248 of 1970

(K.K.Mathew, A. K. Mukherjea, M.H. Beg JJ)

19.10.1973

JUDGMENT

MUKHERJEA, J. –

1. This appeal by special leave is directed against the judgment and order dated July 22, 1969 of the High Court of Judicature Andhra Pradesh at Hyderabad in connection with a petition filed by respondent Dr. G. G. Padma Rao against the appellant Swarajya Lakshmi under Section 13 (1) (iv) of the Hindu Marriage Act, 1955 for the dissolution of the marriage between them by a decree of divorce on the ground that the appellant had for a period of not less than three years immediately preceding the presentation of the petition been suffering from a virulent and incurable form of Leprosy. The appellant and the respondent were married on June 17, 1963. The appellant was then 20 and the respondent, her husband, was 28 years of age. The appellant, we are told, was taken away by her parents to New Delhi only two days after the marriage. She returned to Hyderabad to live with her husband only towards the end of August 1963. Almost immediately thereafter in the month of September her husband discovered that she was suffering both from Leprosy and Tuberculosis. He being a doctor stated treating the wife immediately. Not content with his own treatment he consulted also two experts namely Dr. C. V. Ethirajulu and Dr. Shanti Narayan Mathur. At one point of time the respondent seriously contemplated admitting the appellant to a leper home, but the appellant was taken away by her father to New Delhi in May 1964 as she was then expecting a child. On June 4, 1965 the respondent filed a petition under the Hindu Marriage Act (hereinafter referred to as the said Act) for dissolution of his marriage with the appellant. At the time of presenting this petition he made an application under Section 14 (1) of the said Act before the City Civil Court at Hyderabad for permission to present the petition before three years have elapsed from the date of the marriage on the ground that the case was one of exceptional hardship to the respondent. The permission was granted and the petition was thereafter heard on evidence. On February 22, 1966 the Second Additional Chief Judge, City Civil Court, Hyderabad who heard the petition passed an order by which he held (a) that Swarajya Lakshmi, the appellant, had been suffering from an incurable and virulent form of Leprosy for a period not less than three years immediately preceding the presentation of the petition : but (b) that the petition was premature on the ground that the parties to the petition had not been husband and wife for a period of three years. The learned Second Additional Chief Judge dismissed the petition on these findings. The respondent thereupon went in appeal to the High Court of Andhra Pradesh. A Division Bench heard that appeal. By an order dated July 22, 1969 the Division Bench allowed the appeal, set aside the order of the Court below and granted a decree for divorce in favour of the respondent under Section 13 (1) (iv) of the said Act. From this judgment, appellant Swarajya Lakshmi has now come by special leave on appeal to this Court. The main controversy between the parties before returned round the question : Was the Leprosy of Swarajya Lakshmi of an incurable and virulent form ? Both parties seem to be

agreed that Swarajya Lakshmi was suffering from the Lepromatus form of Leprosy. The respondent contends that this was an incurable and virulent form of Leprosy while it was contended on behalf of the appellant that the Leprosy she was suffering from was curable and in fact she was on the way to recovery when the petition for dissolution of marriage was presented. Both the contesting parties examined doctors in support of their respective contentions. The doctors agreed that 'virulent' is not really a medical term. Apart from his the medical evidence on record is not very well-known disease and there are such well-known medical experts on the subject who have recorded their views in print in a fairly convincing manner that it is not impossible to come to a conclusion regarding the question whether the appellant's Leprosy was of the incurable and virulent type.

2. Before considering the medical authorities on the subject we should consider the scope and intent of the provisions of the Hindu Marriage Act under which Leprosy may sometimes be a good ground of divorce. Section 13 (1) of the said Act is in the following terms :

"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 -

# (i)..... (ii)..... (iii).....##

(iv) has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of Leprosy; or

#....."##

3. In construing these provisions one has to remember that divorce is not generally favoured or encouraged by Courts and is permitted only for very serious and grave reasons. This will become obvious if we compare the provisions set out above with the corresponding provisions for judicial separation. Section 10 of the Hindu Marriage Act permits judicial separation on ground of Leprosy but the conditions are far less stringent. Section 10 (1) of the said Act runs as follows :

"10. (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district Court praying for a decree for judicial separation on the ground that the other party -

# (a)..... (b).....##

(c) has, for a period of not less than one year immediately preceding the presentation of the petition, been suffering from a virulent form of leprosy; or

#....."##

4. It is significant that judicial separations is allowed if either party to a marriage has been suffering from a virulent form of Leprosy for a period of at least one year before the presentation of the petition. In order, however, to be entitled to a decree of divorce a party has to prove that his spouse has been suffering from a form of Leprosy which is not only virulent but also incurable and further that the spouse concerned has been suffering from this ailment for a period of at least three years before the presentation of the petition. Clearly enough, the conditions under which divorce is to be allowed are far more stringent than the conditions under which judicial separation may be granted.

5. Both parties agree that 'virulent' in this context is not a medical term. Indeed, the medical evidence on record also makes the same assertion. What, then, is the meaning of the word 'virulent' ?

6. A suggestion was made to us that the word 'virulent' is a relic of those decisions in Hindu Law which speak of Leprosy as a disqualification entailing forfeiture of property rights of the person affected by that disease when "it appears in a virulent and aggravated form". We were asked to give the same meaning to this word in the present context as had been given in these Hindu Law decisions. In Rangayya Chetti v. Thanikachalla Mudali & Ors., the learned Judge of the Madras High Court seems to have treated the word 'virulent' as descriptive of the disease when it spreads quickly and extensively over the patient's body. Dealing with Leprosy in the same context as furnishing a ground for exclusion from inheritance the Bombay High Court in Ananta v. Ramabai says that "the Leprosy to disqualify must be of the sanious or ulcerous kind, which was, we think the virulent or aggravated type of Leprosy.... ". This meaning is given by the learned Judge on the basis of the ancient Hindu authorities as interpreted by the Bombay and Madras High Courts in certain cases. In the case of Ramabai v. Harnabai the Privy Council while dealing with the issue as to whether a Hindu governed by the Mitakshara was excluded by reason of Leprosy from the position of a joint owner of property of his joint family on the ground of Leprosy held that if the disease is of a type which is not very apparent except to minute inspection it would not exclude the person concerned from performing his social and religious duties in combination with others and would not therefore be a disqualification. The Privy Council cites with approval the following observation of Benson and Sundara Ayyar, JJ. In Kayarohana Pathan v. Subbaraya Thevan : "Deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease would appear to be what has been accepted in both the texts and the decisions as the most satisfactory test". From this it is not difficult to infer that affording to the learned Judges any Leprosy that led to deformity and unfitness for social intercourse could be considered virulent. In Karali Charan Pal v. Ashutosh Nandi the Calcutta High Court in considering the question' as to when Leprosy under the Hindu Law would be a ground of exclusion from inheritance held that it must be of the sanious or ulcerous and not of the anaesthetic type.

7. It was contended on behalf of the appellant that we should follow these decisions in interpreting the word 'virulent' in connection with Leprosy. We cannot, however, agree to accept this suggestion. 'Virulence' as a ground for exclusion from inheritance is treated from an entirely different angle in the Hindu religious and legal texts. The general emphasis in those contexts was of the competence of a man to perform his social and religious obligations and no word has been used in these texts which could be referred to as the corresponding Sanskrit word for 'virulent'. The decisions of the different High Courts and the Privy Council where the word 'virulent' has been used for interpreting the Hindu Law on the subject have used it to describe the Leprosy of the most serious and aggravated type. This does not therefore give any sure and reliable guide in interpreting the word 'virulent'. Since the word is not used by medical experts in describing any particular type of Leprosy we have to find the meaning of the word from the dictionaries.

8. The meaning of the word 'virulent' appears in different dictionaries in the following manner :

Chambers Twentieth Century Dictionary :

Virulent : highly poisonous or malignant : venomous : acrimonious. Webster's Seventh New Collegiate Dictionary :

Virulent : 1. a : marked by a rapid, severe, and malignant course;

b : able to overcome bodily defensive mechanisms :

2. Extremely poisonous or venomous : noxious;

3. full of malice : malignant :

4. objectionably harsh or strong.

The Shorter Oxford English Dictionary :

Virulent : 1. a : Of wounds or ulcers :

Characterized by the presence of corrupt or poisonous matter.

b : Of diseases, etc., : Extremely malignant or violent.

2. Of serpents, material substances, plants, etc. : Possessing venomous or strongly poisonous qualities; extremely noxious.

3. Violently bitter, spiteful or malignant; full of acrimony or enmity.

'Virulent' therefore according to the dictionary meaning stands for malignant and infectious.

9. We shall now proceed to consider whether Lepromatus Leprosy which is the type from which the appellant admittedly suffers is 'virulent'. The Lepromatus Leprosy is malignant and contagious seems to be recognised by almost all medical authorities. We append below some of the observations of the medical authorities on this aspect of the Lepromatus type of Leprosy.

I. Practice of Dermatology by Dr. P. N. Behl (2nd Edition).

At page 232 :

Leprosy is a chronic, infectious disease caused by Mycobacterium leprae.

At pages 232-233 :

Prolonged and close contact is ideal for its transmission. Transmission by short and intimate contacts has also been reported. Exposures to Lepromatus cases result in 4 to 11 times more effective transmission as compared with exposures to non-lepromatous cases.

At page 236 :

Lepromatus Leprosy (L). In this type, the patient has low resistance and Mycobacterium leprae multiply in astronomical numbers.

At page 244 :

The Lepromatous form is malignant and contagious; there is no tendency to self-arrest or regression.

II. Leprosy in Theory and Practice by R. G. Cochrane and T. Frank Davey (2nd Edition).

At page 222 :

.... All clinical evidence goes to show that it is only the open cases of Leprosy with positive skin and/or nasal mucosal biopsies, that are infective, and particularly the Lepromatous form which contains the largest numbers of micro-organisms in the skin.

At page 76 :

Based on the number of multiple-case families, one must conclude that Leprosy is as contagious or more contagious than is Poliomyelitis.

.... It would be advisable to state simply that Leprosy is contagious and omit any reference to the degree of communicability until more factual information is available.

III. Manson's Tropical Diseases by Sir Philip H. Manson-Bahr (sixteenth Edition).

At page 490 :

Lepromatous Leprosy. - This is the type seen in persons with a negligible resistance, and leprosy bacilli are widely disseminated throughout the skin, nerves and reticuloendothelial system.

At page 505 :

Prognosis : Leprosy may sometimes be a slight passing ailment, or may become the most repulsive loathsome disease known to man. The two important factors are concentration and distribution of bacilli in the body and resistance. Prognosis is more favourable in the tuberculoid than in the Lepromatous type and prognosis in the interminate and dimorphous groups is intermediate between these two.

The Danger of Contact. - The factors which predispose to the danger of contact are closeness and duration, the infectivity of the case, combined with the age and general health of the person exposed to contagion.

IV. Notes on Leprosy by Dharmendra (Second Edition).

At page 29 :

Lepromatous Leprosy : This is the severe or malign form of the disease seen in persons with little or no resistance to infection.

10. We shall now deal with the next and also the more important question as to whether

Lepromatous Leprosy is incurable. The medical witnesses in this case have given their views on this subject. We have already stated why we prefer the views of the more well-known experts of Leprosy as we find them in authoritative books on Leprosy.

I. Manson's Tropical Diseases by Sir Philip H. Manson-Bahr (Sixteenth Edition).

At page 506 :

In the Lepromatous type one should speak of arrest rather than cure, and it may take 3 - 15 years to rid the skin of bacilli; sulphones should then be continued at half the maximal dosage for life.

II. Price's Text Book of the Practice of Medicine by Donald Hunter (Ninth Edition).

At page 93 :

Patients should be free from Micro leprae for at least two years before discharge; even then it is not possible to say whether the condition is really cured or merely arrested, for Leprosy is notoriously a disease of remissions.

III. Diseases of the Skin by Richard L. Sutton (Eleventh Edition).

At page 364 :

Prognosis. It could appear that no case of Leprosy recovers spontaneously or as a result of treatment.

IV. Leprosy in Theory and Practice by R. G. Cochrane and T. Frank Davey (Second Edition).

At page 355 :

Although the prognosis of patients on sulphone therapy is undoubtedly good, a permanent cure cannot be certain in any particular case and it may be necessary, as a precaution, for the patient to take the drug for the rest of his life. The failures that do occur with sulphone treatment are usually due to relapses after cessation of treatment or to exacerbations during treatment.

11. Considerable emphasis was laid at the time of arguments by the appellant's counsel on the great advances made by sulphone treatment. It was contended that sulphone treatment has been so revolutionary that Leprosy should no longer be considered to be an incurable disease. Our study of the various authorities on the subject does not support this view. It is true that sulphone is undoubtedly a great advance on the previous methods of treatment of Leprosy but even sulphone does not guarantee complete cure. All authorities agree that the Sequelae remain even after the most prolonged treatment with sulphone drugs. Besides, it is to be remembered that sulphone drugs were discovered about 1941 and they were very well-known all over the world at the time when the Hindu Marriage Act, 1955 was passed. The legislators must be presumed to have known the effect of sulphones on Leprosy. If it be true that sulphone drugs have made Leprosy of all types curable there would be no point in the Legislature making a provision in the Hindu Marriage Act which will entitle a spouse to a decree of divorce if the other party to the marriage would be found suffering from incurable Leprosy.

12. In this view of the matter in our opinion the disease from which the appellant suffers can be described as an incurable form of Leprosy. It is likely that with the future advances in the treatment of Leprosy one day even this form of Leprosy will be amenable to cure. We may, in this connection mention that even after the sulphone therapy a drug known as CIBA-1906 was found out which in preliminary stages appears to be equal in efficacy to the sulphones but far less toxic. Even so experts do not yet consider that with all the advances in physiotherapy, surgery or orthopedic surgery it is possible either to cure the disease completely or to correct the deformities and mutilations that are often produced by the disease. All that the text books seem to suggest is this that "eradication of the disease can, and eventually will, occur through effective treatment of the individual patient and segregation to prevent dissemination of the disease".

13. In view of our findings that the form of Leprosy from which the appellant suffers was both virulent and incurable, we have come to the sad but unavoidable conclusion that this is a fit case in which the respondent should be granted a decree of divorce under the said Act.

14. Considerable arguments were made from the bar at the time of the hearing of the appeal to impress on our mind the great injustice done to the respondent by the appellant's father who, we were told, had deliberately, married the appellant to the respondent at a point of time when he knew she was suffering from a bad type of Leprosy, by suppressing that fact from the respondent. While we have ourselves considerable suspicious in our mind that this is perhaps true, we have taken great care not to allow this fact to have any weight in the matter of deciding this appeal. In the system of marriage prevailing in the Hindu Society, so long as marriages continue to be arranged by the parents, it will be iniquitous to allow the sins of the parents who arrange the marriage to visit on their children who marry. Marriage, according to Hindu Law, is an arrangement and a holy union for the performance of religious duties. There can be no question of either endangering or rupturing that relation on account of the conduct of the parents. That is why marriage even though brought about during the minority of either party thereto does not make the marriage invalid. Divorce and dissolution of marriage are concepts which were alien to Hindu Law before the statute stepped in to modify the traditional law. From the moment a marriage has been completed the relation of the husband and wife has to be considered only from the point of view of the welfare of the husband and wife and, also, we must add, of the children, if any, of the marriage. From this point of view, we have refused to be prejudiced by the consideration of what either the appellant or the appellant's father may have been motivated by. The story that the respondent who was a young doctor of indifferent means was duped and beguiled into a marriage with the appellant by considerations of the position, authority, and affluence of the father-in-law is one which, even if it be true, has nothing to do with the question whether divorce should be given under the Hindu Marriage Act. Likewise, the suggestions made on behalf of the appellant that the respondent had been attempting to extort money from her father, also have no bearing on the question we have to decide here.

15. We should like to make another observation. Sociologists insist and they do do very correctly that we should not allow our minds to be swayed by feelings of emotional loathing and revulsion with which Leprosy patients have been treated throughout human history in all countries throughout the world and that we should take up a very humane and balanced outlook and accept Leprosy "as simply another disorder that requires medical attention". We have no doubt that this is absolutely correct about what should be the social, approach to Leprosy but to our mind this should not provide any justification for compelling a husband to live with a wife who is suffering from an aggravated form of Leprosy and who can give him and his children Leprosy almost any moment in their daily life, even though the Legislature by a statute has given the husband a way of relief. We have no doubt in our minds that the law-makers do not treat the subject of divorce lightly and must have

taken into consideration the consequences of one spouse being compelled to live intimately with another spouse who suffers from Leprosy when they provided for a way out for the former.

16. In the light of these considerations we dismiss the appeal and uphold the judgment of the High Court. In the facts and circumstances of the case we make no order as to costs.

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