
ITM SCHOOL OF LAW - MOOT COURT EXERCISE



**IN THE HON'BLE HIGH COURT
OF ANDHRA PRADESH**

IN THE MATTER OF

V. BALA KRISHNA.....APPELLANT

Vs.

V.LALITHA.....RESPONDENT

**COUNSEL FOR APPELLANT
SAKSHI JI
13LLB064**

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LIST OF ABBREVIATIONS

&	And
AIR	All India Reporter
CAL	Calcutta
H.M.A.	Hindu Marriage Act
HLR	Hindu Law Reporter
HON'BLE	Honorable
KER	Kerala
KLJ	Kerala Law Journal
MAD	Madras
MLJ	Madras Law Journal
MP	Madhya Pradesh
PH	Punjab and Haryana
Sec.	Section
Vs.	Versus
WWW	World Wide Web

INDEX OF AUTHORITIES

Statutes Referred:-

1. Hindu Marriage Act, 1955 - Sec 5(ii)
2. Hindu Marriage Act, 1955 - Sec 12(1)

Cases Referred:-

1. Abraham Jacob Vs. Usha K. Mamman¹
2. Alka Sharma Vs. Abhinesh Chandra Sharma²
3. Bikkar Singh Vs. Mohinder Kaur³
4. Deepayan Chatterjee Vs. Papiya Chatterjee⁴
5. Jayaradha Vs. A.N. Mahalingam⁵
6. Lissy Vs. Jaison⁶
7. Premchand Vs. Padmagriya⁷
8. Somdutt Vs. Raj Kumar⁸
9. Sunder Lal Soni Vs. Namita Jain⁹

Books Referred:-

1. Hindu Law by Werner F. Menski
2. Hindu Law Digest
3. Hindu Law of Marriage & Divorce by Sukhdev Singh
4. Mayne's Hindu Law and Usage by Justice Ranganath Misra & Dr. Vijender Kumar
5. Mulla Hindu Law by S.A. Desai
6. The Hindu Law of Religious and Charitable Trusts by B.K. Mukherjea & T.S. Grewal

¹ 1984 KLJ 593

² AIR 1991 MP 205

³ AIR 1981 PH 391

⁴ 1990 (1) HLR 413 (CAL)

⁵ (1995) 1 MLJ 138

⁶ 2000 (2) HLR 88 (KER)

⁷ AIR 1997 MAD 135

⁸ AIR 1986 PH 191

⁹ AIR 2006 MP 51

Websites:-

1. www.asialaw.com
2. www.indiankanoon.org
3. www.legalight.com
4. www.lexisnexis.com
5. www.manupatra.com
6. www.vakilno1.com

STATEMENT OF JURISDICTION

This memorandum of appeal submitted by the appellant, V. Bala Krishna, has approached the HON'BLE High Court of Andhra Pradesh under **Sec 96** of The Code of Civil Procedure.

SECTION 96: Appeal from original decree —

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.]

ISSUES RAISED

- ✓ Whether the marriage between the appellant and the respondent is liable to be annulled because of the incurable mental disorder which the respondent is having and because of the fraud played by the parents of the respondent?
 - (i) Whether the respondent is actually suffering from mental disorder?
 - (ii) Whether the respondent has been married by fraud?

STATEMENT OF FACTS

1. **V. Bala Krishna** the Appellant, married **V. Lalitha.**, the Respondent, on 14th December 1980, according to the Hindu Rites and Customs stated under the Hindu Marriage Act, 1955 and they both lived together as husband and wife for 23 days.
2. During the period of 23 days after the marriage the respondent had recurrent attacks of epilepsy & had epileptic fits 3 or 4 times, the marriage was not consummated. The first fit was after 4 or 5 days after the respondent came to the house.
3. When the respondent had epilepsy attack on 8-12-1980 at about 6:30 p.m. the appellant took the respondent to Dr. G. Nagabhushanam, who opined that she was having epilepsy and gave prescription.
4. When the respondent had the attack on 8-12-1980 at 10:30 p.m. the father of the respondent came and took the respondent to his house. On 14-12-1980 the father of the respondent came and when he was asked by the elders he admitted that the respondent was having epilepsy.
5. After enquiry the appellant came to know that the respondent had attack of epilepsy about 2 years prior to the marriage. First attack she had after seeing her mother in Gandhi Hospital, when her mother met with an accident and again she had another attack when she failed in her B.A. examination.
6. Because of the incurable disease which the respondent is having and because of the fraud played by the parents of the respondent the appellant filed the petition for annulment of the marriage.
7. It is established beyond doubt that the wife had recurrence of epilepsy and further it is sufficient for the purpose of applicability of S. 12(1)(b) of the Act if there is an attack of epilepsy and need not necessarily be recurrent.

SUMMARY OF ARGUMENTS

The appeal for annulment of marriage filled by the appellant V. Bala Krishna is completely valid based on the ground of mental incapacity of the respondent to enter into marriage and because of the fraud played by the parents of the respondent as mentioned in **Sections 5(ii) and 12 (1)** of the Hindu Marriage Act,1955 and the judgement of the District court should be repealed in order to grant decree for annulment of marriage under the aforesaid ground.

ARGUMENTS ADVANCED

The decree for annulment of marriage should be granted on the ground of mental incapacity of the respondent to enter into marriage and because of the fraud played by the parents of the respondent as mentioned under **Sections 5(ii) and 12 (i)** of the Hindu Marriage Act, 1955.

Sec 5(ii) of the H.M.A.

Conditions for a Hindu marriage: A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(ii) neither party is an idiot or a lunatic at the time of the marriage at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity

The section Sec 5(ii) of Hindu Marriage Act deals with the conditions to be fulfilled at the time of Hindu marriage. It states that the marriage cannot be solemnized between two Hindus if one of the party to the marriage is of unsound mind at the time of marriage; or is unfit for the procreation of children and normal married life; or suffering from recurrent attacks of insanity from the past.

Sec 12 of the H.M.A.

12. Voidable marriages:

(1) Any marriage solemnized, 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 respondent was impotent at the time of the marriage and continued to be so until the institution of the proceedings; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

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(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

Sec.12(1) of Hindu Marriage Act lays down the grounds for voidable marriages. Sec 12(1)(b) clearly states that any marriage solemnized between two Hindus is voidable if the marriage is in the contravention of the condition specified in clause (ii) of sec 5, that deals with mental capacity of the parties to enter into marriage. Sec 12(1)(c) states that if the consent of the petitioner is taken by fraud then also the marriage is voidable.

The appeal for annulment of marriage filed by the appellant is based the aforesaid ground as mentioned in Sec5(ii) & Sec12(1b),(1)(c). The Respondent is suffering from recurrent attacks of epilepsy from the past 2 years before the marriage and Because of the incurable disease which the respondent is having, she is unfit for the procreation of children and because of the fraud played by the parents of the respondent the degree for annulment of marriage should be granted.

In order to my support my case, I would like to bring into light similar cases that has already decided by the other High Courts:

- ✓ In the case of Abraham Jacob Vs .Usha K. Mamman¹⁰ The petitioner belongs to the Marthomite Christian community, while the respondent is a Jacobite Christian. The marriage between the petitioner and the respondent took place on 29-8-1974 at the St. Thomas Mar Thoma Church at Niranam. The proposal for marriage was brought to the petitioner's parents who were made to believe that the respondent belongs to a respectable family and is a proper match for the petitioner. At the time of marriage the petitioner noticed that the respondent had to be prompted by her sister spelling out her name to sign the marriage register. It was later realized that the respondent was mentally retarded and is a "lunatic or idiot". However as time passed it became clear to him that the respondent was deficient in her mental and intellectual equipment and required constant supervision. She was found incapable of normal married life. The petitioner further alleges that the respondent was impotent at the time of marriage and continued to be so even at the time of institution of this petition. The petitioner filed a petition for divorce in the court of Kerala. In the result, the court granted a decree declaring the marriage between the petitioner and the respondent as null and void.

¹⁰ 1984 KLJ 593

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- ✓ In the case of *Bikkar Singh Vs. Mohinder Kaur*¹¹ The appellant-husband was married to the respondent on June 19, 1977. On Oct. 22, 1977, the appellant presented an application under S. 12 of the Hindu Marriage Act, seeking annulment of the marriage for the fraud committed by the parents of the respondent and the respondent herself. Therein he alleged that prior to the marriage he and his mother were shown an altogether different girl who was both literate and beautiful and he had consequently given his consent to a marriage with her. However, when the respondent after the marital rites was brought to the husband's home his mother discovered that the girl was a different one from that earlier shown to them According to the petitioner-appellant the respondent was illiterate of ugly looks was aged about 40 years, and of small stature, and had grey hair. Further she also had some artificial teeth and was suffering from venereal disease in a communicable form and had weak eye-sight and certain defect in her eyes. The appeal is, therefore, allowed and the judgment under appeal is set aside and that of the trial court restored.

- ✓ In this case of, *Lissy Vs. Jaison*¹², Christian marriage took place between the petitioner appellant and the respondent. The petitioner files a petition in the trial court for the nullity of marriage on the fact of established lunacy and idiocy at the time of marriage of the respondent. Considering the the material evidence decree was passed by the learned trial Judge in terms of Section 20 of the Christian marriage Act.

- ✓ In the case of, *Somdutt Vs. Raj Kumar*¹³, arranged marriage took place between the parties on on May 3, 1980, it was told that the respondent is one years older than her husband but actually she was three years older then him and her mother manipulated the horoscope. Because of the fraud committed by the parents of the respondent and the respondent herself, appellant filled an appeal for degree of nullity. The court therefore allowed the appeal and the judgment under appeal is set aside and that of the trial court restored.

The facts of these cases are similar to this case, the counsel request the court to give the degree of nullity to the appellant.

¹¹ AIR 1981 PH 391

¹² 2000 (2)HLR 88 (KER)

¹³ AIR 1986 PH 191

PRAYER FOR RELIEF

“In the light of” the facts stated, arguments advanced, and authorities cited, the Counsel for appellant humbly prays before this Honorable High Court of Andhra Pradesh to declare that:-

1. The marriage between the petitioner and the respondent is null and void and to grant a decree for annulment of marriage.
2. The parents had played fraud upon the appellant.

And pass any other order that this Honorable Court may deem fit in the interests of justice equity and good conscience.

Date: - 4th October, 2013

ALL OF WHICH IS REPECTFULLY SUBMITTED

Place: - Gurgaon

Counsel for Appellant

Sakshi Ji

13LLB064