

**Rajeev and Another Vs. RamyA.K**

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**SooperKanoon Citation :** [sooperkanoon.com/1013582](http://sooperkanoon.com/1013582)

**Court :** Kerala

**Decided On :** Feb-04-2013

**Judge :** Honourable Mr.Justice Pius C.Kuriakose

**Appellant :** Rajeev and Another

**Respondent :** RamyA.K

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HON'BLE MR. JUSTICE P.D.RAJAN MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 Mat.Appeal.No. 994 of 2010 & CROSS OBJECTION NO.59 OF 201.----- OP.146/2010 of FAMILY COURT, MALAPPURAM APPELLANT(S)/RESPONDENTS: ----- 1. RAJEEV, AGED 3 YEARS, S/O.ACHUTHANKUTTY NAIR,ADIYATTU HOUSE,POLPPAKKARA VIA.EDAPPAL,PONNANI TALUK,MALAPPURAM DISTRICT.

2. INDIRA, W/O.ACHUTHANKUTTY NAIR, -DO-. BY ADVS.SRI.SANTHEEP ANKARATH SMT.M.SINDHU THANKAM RESPONDENT(S)/PETITIONER: ----- RAMYA K., W/O.RAJEEV, AGED 2 YEARS, KALLAYIL HOUSE,VADAKKUMPURAM P.O.-676552, TIRUR TALUK, MALAPPURAM DISTRICT. BY ADV. SRI.P.JAYARAM THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 04-02- 2013, ALONG WITH CROSS OBJECTION NO. 59/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE & P.D. RAJAN, JJ.

=====  
Mat. Appeal No. 994  
of 2010 ===== Dated this the  
5th day of February, 2013 JUDGMENT PIUS C. KURIAKOSE, J.

This appeal is preferred by the respondents in O.P.No.146/2010 on the files of the Family Court, Malappuram challenging the order passed by the Family Court in that original petition directing them to pay a sum of `6,71,000/- being the value of 55 sovereigns of gold ornaments, allegedly misappropriated by the 1st appellant within a few days of the marriage between the two.

2. The allegation of the respondent that her gold ornaments weighing 55 sovereigns were misappropriated by her husband, the 1st appellant, at the instance of the mother-in-law, the 2nd appellant, was disputed by the appellants in their counter statement. The evidence before the Family Court consisted of the oral evidence of PW1, the respondent herself, and that of RW1, the 1st appellant. Documentary evidence on the side of the respondent Mat.A.994/2010 2 consisted of Exts.A1 to A3 while the same on the side of the appellants consisted of Exts.B1 to B5. The learned Family Court on appreciating the evidence, would come to the conclusion that the case of the respondent regarding misappropriation of 55 sovereigns of gold ornaments belonging to her by her husband at the instance of the mother-in-law is true. It was accordingly that the impugned decree for payment of `6,71,000/- being the value of 55 sovereigns of gold ornaments was passed.

3. Having considered the submissions addressed at the Bar and having made a reappraisal of the evidence, particularly the oral evidence adduced by PW1, we are convinced that the appreciation of the PW1's evidence by the learned Family Court was not at all satisfactory. We find that contrary to what was pleaded in the original petition, PW1 stated in evidence that till 2009, her mother-in-law, the 2nd appellant, used to give her some of the ornaments, which she had received at the time of the marriage so that she can wear the same for functions. This particular aspect Mat.A.994/2010 3 of the matter, i.e., these admissions, which came from the mouth of PW1 were not noticed by the Family Court. We are of the view that the issued should be reconsidered by the Family Court.

4. We, therefore, dispose of Cross Objection No.59/2012, set aside the impugned judgment and remit O.P. No.146/2010 to the Family Court, Malappuram. The parties will enter appearance before the Family Court on 18-2-2013. Transmit the lower court records forthwith to the Family Court. The Family Court is directed to take a fresh decision on re-appreciating the evidence already on record and appreciating further evidence, which the parties are free to adduce before the Family Court. The Family Court, at any rate, will complete the exercise and pass revised judgment within a period of three months of parties entering appearance.

5. Before we part with this case, we must say that we interacted with the parties on two occasions. We notice that this is a case where in the mediation conducted by one of Mat.A.994/2010 4 the mediators attached to the High Court Mediation Centre the parties became agreeable to resolve all the disputes between them. The mediated settlement agreement could not be implemented for one reason or other. Ultimately, the mediator obliged to submit a failure report. During the course of interactions which we had with the parties we felt very strongly that still there is some chance for reconciliation between the parties. Therefore, we order that before the parties are permitted to adduce further evidence pursuant to the present order of remand, the Family Court shall once again explore the possibilities of settlement between the parties. The parties should be summoned to the court hall or to the Presiding Officer's Chambers and only when the Presiding Officer is convinced that the reconciliation is impossible need the court permit the parties to adduce evidence in pursuance to the present order of remand. PIUS C. KURIAKOSE, JUDGE. P.D. RAJAN, JUDGE. nkm.

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