

Fathima and Others Vs. Saithalavi

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Court : Kerala

Decided On : Feb-05-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : Fathima and Others

Respondent : Saithalavi

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 TUESDAY, THE 5TH DAY OF FEBRUARY 2013 16TH MAGHA 193 Mat.Appeal.No. 1024 of 2009 () ----- (AGAINST THE ORDER IN OP.928/2008 of FAMILY COURT, MALAPPURAM DATED 08 07-2009) APPELLANT(S)/PETITIONERS IN O.P:
----- 1. FATHIMA, AGED 4 YEARS, D/O.MUHAMMED, VADAKKINIYATH HOUSE THALAKKADATHOOR P.O., AREEKKODU.

2. FAYROOS, AGED 1 YEARS, (MINOR), S/O.SAITHALAVI, -DO- 3. MUHAMMED HARIS, AGED 1 YEARS, (MINOR), S/O.SAITHALAVI.

4. SAREENA, AGED 9 YEARS, (MINOR), D/O.SAITHALAVI (THE APPELLANTS 2 TO 4 ARE MINORS AND ARE REPRESENTED BY THEIR MOTHER AND NATURAL GUARDIAN THE IST APPELLANT). BY ADV. SRI.A.KRISHNAN

RESPONDENT(S/RESPONDENTS

IN

O.P):

----- SAITHALAVI, AGED 5 YEARS,
S/O.MUHAMMED, THETTUNGAL HOUSE, PALLIPPADI P.O. THANALUR,
TIRUR TALUK. BY ADV. SRI.P.VENUGOPAL (1086/92) THIS MATRIMONIAL
APPEAL HAVING BEEN FINALLY HEARD ON 05-02-2013, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: PIUS C. KURIAKOSE &
P.D.RAJAN, JJ.

----- Matt. Appeal No.1024 of 2009 -----
Dated this the 5th day of February, 2013 JUDGMENT PIUS C. KURIAKOSE, J.

Under challenge in this appeal preferred by the wife and children is the judgment of the Family Court, Malappuram to the extent the same declines the appellants prayer for return of 40 sovereigns of gold ornaments worth Rs.4 lakhs of cash towards the matrimony given to the 1st appellant at the time of marriage. The appellants' claim was stoutly denied by the respondent the husband of the first appellant.

2. The evidence before the Family Court consisted of the oral evidence of first appellant as PW1 and RW1 the respondent and RW2, a witness on the side of the respondent. Documents consisted of Exts.A1 to A2 and Exts.B1 to B3.

3. Apart from the oral evidence of PW1, it was mainly on Ext.A1 series of photographs that the appellant relied on to prove her case of having been given 40 sovereigns of gold ornaments. The court below has taken the view that Ext.A1 series of Matt. Appeal No.1024 o

2. photographs were not to be relied upon and that in the absence of any documentary evidence the appellants' case of having received 40 sovereigns at the time of marriage and the respondent misappropriated such ornaments were not proved. Similarly the court below found that the appellants' case of having received Rs.4 lakhs by way of patrimony from her father is not proved and this was why the court below declined the appellants' prayer for return of gold ornaments and cash.

4. In this appeal various grounds are raised assailing the impugned order. We have heard the submissions of Mr.A.Krishnan, learned counsel for the appellant. We were taken by the learned counsel through the impugned order to the extent it pertains to point No.1(the relief of return of ornaments and cash). We were taken also through the oral evidence of PW1 and RW1.

5. Sri.Venugopal, the learned counsel for the respondent submitted that there is no infirmity about the impugned order. It has not been established in evidence that Ext.A1 series of photographs are genuine documents and, therefore, the learned counsel argued that there is oath against oath the court below Matt. Appeal No.1024 o

3. was justified in preferring the evidence of RW1 than the evidence given by PW1 regarding Ext.A1. The counsel also submitted that the parties belong to Malabar where the prevailing custom is that the ornaments given to the bride will be 10 times of mehar which is given by the bridegroom. RW1's evidence is that he gave only one sovereign as mehar to the first matrimony.

6. We have given our anxious consideration to the rival submissions addressed at the Bar and we have read through the impugned judgment once again and we have made a thorough re-appraisal of the evidence, particularly the oral evidence of PW1 and RW1 and Ext.A1. The question that arises before us is whether there is any justification of granting a decree in favour of the first appellant for return of ornaments. Having re-appreciated the evidence and having taken into account the social and financial status of PW1 and RW1 at the time when their marriage was solemnized(as an arranged marriage with the blessings of the parents), we are of the view that the version of PW1 that he was given ornaments and cash at the time of the marriage is not improbable. But at the same time, we notice that her version that she was given 40 sovereigns of gold at the time of marriage Matt. Appeal No.1024 o

4. is an exaggeration. In this context, we notice the evidence of RW1 himself that PW1 had a few bangles and chains at the time of the marriage. But according to him, he did not bother to find out as to what was the weight of those ornaments. The parties belong to middle class (or just below middle class) families. PW1's

father was a fish merchant. We are of the view that PW1's version that the mehar which was received by her was 1 = sovereigns of gold is more credible than RW1's version that he gave only one sovereign of gold as mehar. We have taken into account the custom prevailing in Malabar area that the ornaments given to the bride is approximately 10 times of the mehar. We are, therefore, of the view that the first appellant was given 15 sovereigns of gold at the time of the marriage. The respondent is bound to account for those ornaments and therefore interfering with the impugned judgment, to the extent the same pertains to the appellants claim for return of gold ornaments, we direct the respondent to return to the appellant 15 sovereigns of gold ornaments in specie or in the alternative its value. We pass a decree directing the respondent to return to the first appellant 15 sovereigns of gold ornaments in specie, failing Matt. Appeal No.1024 o

5. which the appellant shall pay Rs.1,50,000/- together with interest at the rate of 9% from the date of suit till realization. The appeal is allowed to the above extent. Parties are directed to suffer their respective costs. PIUS C. KURIAKOSE Judge
P.D.RAJAN Judge mns

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