

Subina Vs. Sidhiq and Another

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Court : Kerala

Decided On : Jul-29-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Subina

Respondent : Sidhiq and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN MONDAY,THE 29TH DAY OF JULY2013/7TH SRAVANA, 1935 Mat.Appeal.No. 383 of 2011 () ----- AGAINST THE ORDER/JUDGMENT IN OP 60/2009 of FAMILY COURT, NEDUMANGAD DATED 25 02-2011 APPELLANT/PETITIONER: ----- SUBINA, AGED 2 YEARS, D/O.MUHAMMED SALIM, DHARUSSALAM VEEDU, THANNOOR ANADU MURI, THENNOOR VILLAGE NOW RESIDING AT NEAR THENNOOR MADRASA. BY ADV. SRI.M.DINESH RESPONDENT(S)/RESPONDENTS: ----- 1. SIDHIQ,AGED 2 YEARS, S/O.ALIYARUKUNJU, PARKKONAM THOTTARIKATHU VEEDU, ANADU MURI PERINGAMALA VILLAGE.

2. ABUSA BEEVI, AGED 4 YEARS, W/O.ALIYARUKUNJU, PARKKONAM THOTTARIKATHU VEEDU ANADU MURI, PERINGAMALA VILLAGE. R,R1 -2 BY ADV. SRI.P.V.KUNHIKRISHNAN THIS MATRIMONIAL APPEAL HAVING BEEN

FINALLY HEARD ON 29-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: acd ANTONY DOMINIC & P.D. RAJAN, JJ.

----- Mat. Appeal No.383 of 2011
----- Dated this the 29th day of July, 2013
JUDGMENT ANTONY DOMINIC,J.

This appeal arises from the judgment and decree of the Family Court, Nedumangad in O.P.No.60/2009. The O.P. was filed by the appellant herein for return of Rs.4 lakhs, 25 sovereigns of gold ornaments and a rado watch worth Rs.10,000/- from the 1st respondent.

2. The marriage between the appellant and the 1st respondent was solemnized on 3.8.2008. According to the appellant, at the time of marriage, the 1st respondent was given cash Rs.4 lakh as 'acharam' and a rado watch worth Rs.10,000/-.

3. It is the case of the appellant that she was given 25 sovereigns of gold ornaments. It is stated that since the beginning of her matrimonial life, the respondents treated her with cruelty of various kinds and that in the meanwhile, apart from misappropriating the cash and the rado watch, the 1st respondent also threatened and extracted from the appellant 25 sovereigns of gold ornaments and misappropriated it. Finally, the appellant had to leave the matrimonial Mat. Appeal No.383/11 2 home on 4.9.2008 and accordingly she joined her parents with whom she is now living. It was in these circumstances that the appellant filed O.P.No.60/2009 before the Family Court for return of gold, cash and the rado watch. She produced Exts.A1 to A5 and also filed her proof affidavit substantiating her averments.

4. Admittedly, the respondents entered appearance before the Family Court and thereafter, they remained absent and were declared exparte and an exparte decree as prayed for by the appellant was passed. Subsequently, on an application filed by them, the exparte decree was set aside and the respondents were given an opportunity to contest the matter on merits. However, again the respondents absented from the Court, as a result of which, they were declared exparte. Thereafter, the Family Court considered the case of the appellant and

dismissed the claim holding that, all that was available before the Family Court was the unsubstantiated claim of the appellant. The Court also doubted the conduct of the respondents in remaining exparte. It is aggrieved by this judgment of the Family Court, the appeal has been filed by the appellant wife.

5. We are also informed by the learned counsel for the appellant that, subsequently, the appellant filed O.P.No.892/2011 Mat. Appeal No.383/11 3 before the Family Court, Nedumangad for divorce and that there also an exparte decree of divorce was passed by the Family Court on 1.6.2012. That decree also has become final.

6. We heard the learned counsel for the appellant and also the learned counsel for the respondents.

7. According to the learned counsel for the appellant, in the light of the fact that the appellant had tendered her evidence by filing a proof affidavit and has also produced Exts.A1 to A5, as she was not cross examined by the respondents, her claim should have been accepted by the Family Court.

8. On the other hand, the learned counsel for the respondents contended that there was no legally acceptable evidence regarding the entrustment of the amount, gold or watch to the 1st respondent and that therefore, the Family Court was justified in dismissing the petition.

9. Having considered the rival submissions made at the bar, we are of the view that the Family Court clearly erred in dismissing the petition. It is the specific case of the appellant that at the time of marriage, the 1st respondent was given 'acharam' of Rs.1 lakh and Rs.3 lakh as dowry, apart from a rado watch worth Rs.10,000/-. She also contended that she was given 25 sovereigns Mat. Appeal No.383/11 4 of gold ornaments at the time of her marriage. In support of her case, she had produced Ext.A1 application made by both parties and their parents with their signatures to the Town Muslim Jama Ath, Kochukarikkakam dated 25.7.2008. This documents mentions that at the time of marriage, the 1st respondent was given 'acharam' of Rs.1lakh, Rs.3 lakhs as dowry and the appellant was given 25 sovereigns of gold ornaments. The entrustment and misappropriation have been

narrated in the proof affidavit filed by the appellant and in the proof affidavit, she has also stated that by threatening her, the 1st respondent had extracted her 25 sovereigns of gold ornaments. As already stated, the respondents remained absent as a result of which, the appellant was not cross examined. This, therefore, means that there was unchallenged evidence adduced by the appellant to substantiate her case. In such a case, we see no reason why the Family Court should not have accepted the evidence adduced by the appellant. If her evidence was accepted, there was no reason to decline her prayer for a decree as prayed for by her. Therefore, we are not inclined to agree with the view taken by the Family Court and accordingly, we set aside the decree passed by the Family Court dismissing O.P.No.60/2009.

10. The O.P. will stand decreed entitling the appellant to Mat. Appeal No.383/11 5 realise Rs.1 lakh paid as 'acharam', Rs.3 lakhs as dowry and Rs.10,000/- towards value of the rado watch. She will also be entitled to 7% interest from the date of petition till date of realisation. She will also be entitled to realise 25 sovereigns of gold ornaments from the respondents and on failure thereof, she will be entitled to realise the value thereof at the rate of Rs.15,000/- per sovereign. If the amount is not paid within six weeks from today, the appellant will also be entitled to realise interest at the rate of 7% from today till date of realisation. The Mat. Appeal is disposed of as above. ANTONY DOMINIC, JUDGE P.D. RAJAN, JUDGE. acd Mat. Appeal No.383/11 6 Mat. Appeal No.383/11 7

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