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Suma Vs. Praveen Kumar

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Court : Kerala

Decided On : Feb-17-2014

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Suma

Respondent : Praveen Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI MONDAY,THE16H DAY OF DECEMBER201325TH AGRAHAYANA, 1935 Mat.Appeal.No. 751 of 2009 ( ) ---------- (AGAINST THE

ORDER
IN OP.NO. 323/2008 OF FAMILY COURT, KOZHIKODE DATED1803-2009) ---------- APPELLANT/PETITIONER : ---------- P.K.SUMA,D/O.N.K.MOHAN, RESIDING AT PARAKANDIYIL HOUSE, MUTTUNGAL, VADAKARA, KOZHIKODE DISTRICT. BY ADVS.SRI.V.V.SURENDRAN SRI.P.A.HARISH RESPONDENT/RESPONDENT: ---------- PRAVEEN KUMAR,S/O. KRISHNAN NAMBIAR, RESIDING AT MADATHIL HOUSE, POST. ERAMALA, VADAKARA, KOZHIKODE DISTRICT. BY ADVS. SRI.K.P.RAMACHANDRAN SRI.K.SIVADAS SRI.SEBASTIAN JOSEPH

(KURISUMMOOTTIL) SRI.PADMALAYAN.P.P. SMT.BINDHU PAULOSE THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON1612-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts HARUN-UL-RASHID & ALEXANDER THOMAS, JJ.

---------- Mat.Appl. No. 751 OF2009---------- Dated this the 17th day of February, 2014

JUDGMENT

Harun-Ul-Rashid,J.

The appellant is the petitioner in OP No. 323/08 on the file of the Family Court, Kozhikode. The appeal is directed against the common order in OP No. 323/08 and connected cases to the extent it declined return of 35 gold sovereigns or its value thereon. By the impugned order dated 18.03.2009, the Family Court partly allowed OP No. 323/08 and a decree is passed for releasing 10 sovereigns of gold ornaments from the respondent personally and on his assets and in the alternative he is liable to pay Rs.88,800/- as the value of 10 sovereigns of gold ornaments to the petitioner. The parties are hereinafter referred as arrayed in the common order.

2. The OP No. 323/08 was disposed of along with OP No. 322/08 and MC No. 119/08. All the three cases were filed by the appellant herein as the petitioner. The OP No.322/08 was filed for the dissolution of marriage and MC No. 119/08 for maintenance past and future. All the three cases were tried jointly and common order was passed. The learned Judge granted a decree of divorce in OP No. 322/08. MC No. 119/08 was also allowed granting maintenance to the appellant and Mat.Appl. No. 751 OF20092 his child.

3. The marriage between the petitioner and respondent was solemnised on 26.11.2001. One male child was born out of their wedlock. According to the petitioner, after about one year of the birth of child, the respondent and his mother started to harass her mentally and physically. The petitioner had 35 sovereigns of gold ornaments, at the time of marriage including 21/2 sovereigns received as

presentation. The thali chain is about 4 sovereigns. According to the petitioner, the respondent has secured the entire gold ornaments from the petitioner including the thali chain. OP No. 323/08 was filed seeking return of 35 sovereigns of gold or its value at the rate of Rs.8800 per sovereign or in the alternative its value at the rate of Rs.8800/- per sovereign.

4. On behalf of the petitioner, PW1 to 3 were examined and Ext.P1 and P2 were marked. Respondent was examined as RW1. Exhibits X1, X1a to X1c are marked as court exhibits. In the counter affidavit filed by the respondents he denied the allegations in the petition that he took her gold ornaments. According to him he is not liable to return the gold ornaments since the gold ornaments were retained by the petitioner. Mat.Appl. No. 751 OF20093 5. PW1 testified before the court that at the time of marriage her parents gave her 35 gold ornaments. Immediately after the marriage, the gold ornaments were entrusted to the respondent and he was the custodian of the gold ornaments. PW2 and PW3 were examined. They have produced certain documents. It is evident from the testimony of PW2 and PW3 who are the respective Branch Managers of Vadakara Co-operative Rural Bank and the Secretary, Vadakara Block Employees Co-operative Society that more than one occasion the first respondent has approached the Bank and pledged gold ornaments. The respondent maintained membership in the respective Banks. It is categorically deposed by PW1 and 3 that he has pledged items of gold during the year 2006, 2007 and 2008. PW1 in her chief examination clearly stated that the entire gold ornaments were taken into custody by the respondent. She was cross examined. I have not come across even a single question put to her regarding denial or entrustment of gold. She was not cross-examined regarding the entrustment, custody and pledging of the gold ornaments. Some other questions were put to her but it is very strange to see that nothing has been asked of no regarding the entrustment of gold. In this Mat.Appl. No. 751 OF20094 circumstances, there is no justification for the learned Judge to find that only 10 sovereigns of gold was pledged with the Bank and Society and therefore PW1 is entitled to get back only 10 sovereigns of gold pledged with the Bank and Society and taken back by PW1.

6. Though, the respondents denied the entrustment of gold in the counter statement and while he was examined, he has no case that he had pledged anybody else's of gold. The dealing of gold ornaments by the respondent would show that he was the custodian of the gold belonging to his wife. If he is the custodian he will have to account the entire gold that belongs to his wife. Simply because he had pledged 10 sovereigns of gold with the Bank and Society does not mean that he has got custody of only 10 sovereigns. In the facts and circumstances, on a moderate estimate we feel that the respondent has been dealing with atleast 25 sovereigns of gold out of 35 sovereigns. 10 sovereigns might have been with the wife as necessary wearing approval. Therefore, we have no hesitation to hold that the petitioner is entitled to get back 25 sovereigns of gold ornaments entrusted with the respondents. In the result, the appeal is partly allowed. Order passed by the court below in OP No. 323/08 is modified. A Mat.Appl. No. 751 OF20095 decree is passed allowing the apppellant/petitioner in OP No,. 323/08 to realise 25 sovereigns of gold ornaments from the respondent personally and from his assets and in the alternative he is liable to pay the present market value of the 25 sovereigns of gold at the rate of Rs.22,000/- per sovereign. There will be no order of costs. Sd/-HARUN-UL-RASHID, Judge. Sd/-ALEXANDER THOMAS, Judge. lsn

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