SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shweta & Anr vs.vimal Kumar

Shweta & Anr vs.vimal Kumar

SooperKanoon Citation : sooperkanoon.com/1203520

Court : Delhi

Decided On : Feb-16-2017

Appellant : Shweta & Anr

Respondent : Vimal Kumar

Advocate for Pet/Ap. : Mr. Sanjay Sharma

Judgement :

$~2 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA882017 & CM30322017 1. SHWETA & ANR ..... Appellants Through : Mr. Sanjay Sharma, Advocate versus VIMAL KUMAR Through : None. ..... Respondent CORAM: HON'BLE MS. JUSTICE HIMA KOHLI % The appellants/defendants impugn the judgment and decree dated

ORDER
1602.2017 18.10.2016 passed by the learned trial court in a suit for recovery instituted by the respondent/plaintiff (husband of the appellant No.1 and son-in-law of the appellant No.2).

2. The facts of the case lie in a narrow compass. The case of the respondent/plaintiff in the suit was that his marriage was solemnised with the appellant No.1/defendant No.1 on 25.4.2012 at Lucknow as per the Hindu rites and ceremony. After the marriage, the parties had shifted to Delhi and started residing in a tenanted premises at Rohini. Within a few months of their marriage,

disputes and differences had arisen between the parties. From 14.7.2012, the respondent/plaintiff started residing separately RFA882017 Page 1 of 8 from the appellant No.1/defendant No.1. On 5.8.2012, the respondent/plaintiff reached the tenanted premises at Rohini, Delhi for vacating the same since the lease deed in respect thereof was expiring on the same day. He requested the appellant No.1/defendant No.1 to vacate the premises, but she declined to do so and instead, called the police. A constable from the local police station arrived at the spot and recorded the statement of the appellant No.1/defendant No.1. A compromise was arrived at between the parties, and the respondent/plaintiff did not take any of the household articles from the flat including a Hundai I-20 car parked there. The respondent/plaintiff claimed that he had agreed to hand over possession of the household articles to the appellant No.1/defendant No.1 in the absence of any space to store the same.

3. It has been averred in the plaint that on the very next day i.e. on 06.8.2012, the appellant No.2/defendant No.2 (father-in-law of the respondent/plaintiff) and their relatives arrived in Delhi, contacted the respondent/plaintiff and threatened him with dire consequences. As a result, the respondent/plaintiff did not visit the flat on 6.8.2012. After two days, when he visited the flat on 8.8.2012, he was shocked to discover that all the household articles purchased by him from his own funds after the marriage, were taken away by the appellants/defendants, without his consent or permission. Claiming that the appellants/defendants had no right to remove the household articles from the tenanted premises particularly when they had been purchased from his own funds, the respondent/plaintiff served on them a legal notice dated 4.6.2014, but they did not give any response thereto. RFA882017 Page 2 of 8 4. In July, 2014, the respondent/plaintiff instituted a suit for recovery of Rs.7,17,109/-, against the appellants/defendants, the breakup whereof has been furnished in para 5 of the plaint and reproduced below:-

"a) Gold Jewellery worth b) Hundai I-20 car worth c) Whirpool Refrigerator worth d) Samsung LED32 EH500worth e) Videocon D2H HD worth f) Dining table worth g) Double Bed worth h) Sleepwell Mattresses worth i) Dressing table worth j) Desert cooler worth k) Iron worth l) Thermo Flask worth m) 2 Gas cylinders worth n) Single bed wroth o) Miscellaneous items worth Total : Rs.2,00,000/- Rs.3,92,500/-

Rs.11,509/- Rs.34,500/- Rs.3,000/- Rs.2,800/- Rs.15,000/- Rs.9,000/-, Rs.8,000/- Rs.9,000/- Rs.500/- Rs.800/- Rs.4,000/- Rs.1,500/- Rs.25,000/- _____ Rs.7,17,109/

The suit was contested by the appellants/defendants, who took a plea in their written statement that the respondent/plaintiff had abandoned his wife, the appellant No.1 without any rhyme and reason and his family members had been pressing her to bring more dowry articles and cash. It was alleged that the respondent/plaintiff did not visit the tenanted premises from 14.7.2012 to 5.8.2012 and failed to pay the rent. The appellants/ defendants denied that any of the goods/articles lying in the tenanted premises had been purchased by the respondent/plaintiff from out of his own funds and did not belong to him. Rather, they claimed that all the goods and articles lying in the tenanted premises were purchased from the funds RFA882017 Page 3 of 8 arranged by them and paid to the respondent/plaintiff. The appellants/defendants also claimed that the invoices/bills filed by the respondent/plaintiff in support of his claim, were false and fake documents.

6. After the pleadings were completed in the suit, issues were framed on 18.3.2015 and the parties were directed to lead evidence. The respondent/plaintiff examined himself as PW-1 and his mother Smt. Urmila, as PW-4. He also examined his two colleagues, namely, Shri Jeet Kumar as PW-2 and Shri Chetan Rana as PW-3. The respondent/plaintiff filed his affidavit by way of evidence, Ex.PW1/A and placed on record a copy of the statement recorded by the police on 5.8.2012, marked as Ex.PW1/2. He filed several other documents, including copies of the bills/invoices showing purchase of the articles [Ex.PW
to Ex.PW
(Colly)].. On their part, appellant No.1/defendant No.1 had entered the witness box and examined herself as DW-1. However, she did not file any documents.

7. On examining the pleadings of the parties and going through the oral and documentary evidence placed on record, the trial court rejected the claim of the respondent/plaintiff in respect of the Hundai I-20 car by holding that the invoices/bills showing purchase the said vehicle and the cars registration

certificate, had not been placed on record by him.

8. The second claim in respect of jewellery items to the tune of Rs.2.00 lacs, allegedly given by the mother of the respondent/plaintiff to the appellant No.1/defendant No.1 after their marriage, was also rejected on the ground that the invoices placed on record showing purchase of the jewellery items, were in the name of Smt. Urmila, mother of the respondent/plaintiff and no evidence was placed on record to show that the said articles were RFA882017 Page 4 of 8 handed over by her to the appellant No.1/defendant No.1. Holding that the deposition of Smt. Urmila (PW-4) was an attempt to improve the case set up by the respondent/plaintiff, the trial court had discarded the same and turned down the claim of the respondent/plaintiff in respect of the jewellery items.

9. The third and the final claim of the respondent/plaintiff was in respect of household articles purchased by him after the marriage. Noting that the respondent/plaintiff had placed on record bills in the form of Ex.PW
to Ex.PW
(colly) to show purchase of household articles and further, observing that the appellant No.1/ defendant No.1 had failed to place on record any evidence to show that the said articles, which were admittedly taken away by her on 7.8.2012 and 8.8.2012, were purchased by the respondent/plaintiff from out of the money given by her parents or out of the money that she had retained with her, the trial court allowed the said claim limited to the extent of Rs.70,839/-, on the basis of the bills/ invoices for the sum of Rs.11,329/-, Rs.13,500/-, Rs.34,500/- and Rs.11,509/-. As a result, the suit for recovery of Rs.7,17,109/- instituted by the respondent/ plaintiff was decreed against the appellants only for a sum of Rs.70,838/- with interest @ 9% p.a. on the principal amount from the date of institution, till realization. Aggrieved by the aforesaid judgment, the appellants/defendants have filed the present appeal.

10. Mr. Sanjay Sharma, learned counsel appearing for the appellants/ defendants submits that the trial court has erred in passing a decree for a sum of Rs.70,838/- in favour of the respondent/plaintiff by ignoring the fact that he had not produced his bank account statement to show that he had purchased the household goods;

that the testimony of PW-3 and PW-4 was RFA882017 Page 5 of 8 unreliable as they were colleagues of the respondent/plaintiff and they would have been influenced by him and that the invoices/bills filed by the respondent/plaintiff were forged and fake documents.

11. After examining and carefully sifting the pleadings in the suit, the affidavits by way of evidence filed by the parties, the deposition of the witnesses and the relevant documents, particularly, the invoices in question, the trial court proceeded to reject the unproven claims of the respondent/plaintiff in respect of the Hundai I-20 car worth Rs.3,92,500/- and jewellery worth Rs.2.00 lacs. As a result, a substantial part of the claim of the respondent/plaintiff to the tune of Rs.5,92,500/- was rejected outright on the ground that he had failed to prove that the said items had been purchased by him or his family members. The only claim that was allowed in favour of the respondent/plaintiff was in respect of the electronic items and furniture, etc., for a sum of Rs.70,838/- based on the original bills/invoices produced by the respondent/plaintiff [Ex.PW
to Ex.PW
(colly)]..

12. For granting the said relief, the trial court has not relied on the deposition of any of the witnesses produced by the respondent/plaintiff including PW-2, PW-3 and PW-4. Instead, it was observed that the appellant No.1/defendant No.1 had admitted in her cross-examination that she had not filed even a single invoice/bill to demonstrate that the said articles in question had been purchased by her.

13. This Court has also examined the deposition of the appellant No.1 (DW-1) recorded on 1.9.2016. In her cross-examination, she had specifically stated that she had taken away all the articles belonging to her and left the RFA882017 Page 6 of 8 tenanted premises situated in Rohini on 8.8.2012, after handing over the keys to the landlord. She also admitted to the fact that she had not placed on record any bill or any documentary evidence that could prove that the said articles, which were taken away by her on 8.8.2012, had been purchased by her. Given the aforesaid factual position, the trial court cannot be faulted in arriving at a conclusion that not even a shred of evidence was placed on record by the

appellant No.1/defendant No.1 to show that the aforesaid electronic items and furniture was purchased by her from her own funds or out of the money given by her parents to the respondent/plaintiff.

14. Having regard to the fact that the appellants/defendants were unable to place any evidence on record to show that the articles in question were purchased by them from their funds and on the other hand, noting that the respondent/plaintiff had filed the bills/invoices showing purchase of the said articles that were all in his name, there was no good reason for the trial court to deny the claim of the respondent/plaintiff for the value of the goods purchased through the said invoices. Moreover, since the appellants/defendants had taken a stand in their defence that the said invoices were fake and forged documents, it was for them to prove the same by leading cogent evidence which they had failed to do. Nor did they attempt to cross examine the respondent/plaintiff on this aspect.

15. It may be noted that the trial court had discounted the version of the appellants/ defendants that the Hundai I-20 car was purchased by appellant No.1/defendant No.1 from the money provided by her father. It emerges from the testimony of the appellant No.1/defendant No.1 (DW-1) that the registration certification of the vehicle was in her possession and she had RFA882017 Page 7 of 8 specifically stated the same had been jointly purchased in her name and that of the respondent/plaintiff. Despite the same, not fully satisfied with the evidence produced by the respondent/plaintiff to prove that he had purchased the vehicle from his funds, the trial court had declined to give any relief to him in relation to the vehicle.

16. This Court is of the opinion that the trial court has rightly disbelieved the respondent/plaintiff in respect of his claim for a sum of Rs.3,92,500/- relating to purchase of Hundai I-20 car and jewellery articles allegedly purchased by him after the marriage. But there does not appear any error in the impugned judgment insofar as allowing the claim of the respondent/plaintiff to the tune of Rs.70,838/- towards the purchase price of electronic items and furniture particularly when all the related invoices are in his name and were raised in May/June, 2012, well after the date of the marriage of the parties.

17. Accordingly, the judgment of the trial court is sustained and the present appeal is dismissed in limine, along with the pending application, being meritless. HIMA KOHLI, J FEBRUARY16 2017 sk/ap/rkb RFA882017 Page 8 of 8

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com