

Bareera vs Abdulla

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Court : Kerala

Decided On : Feb-28-2025

Judge : Honourable Mr. Justice Sathish Ninan, Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : CO/93/2016

Appellant : Bareera

Respondent : Abdulla

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946 MAT.APPEAL NO. 357 OF 2016 AGAINST THE ORDER DATED 04.02.2016 IN OP NO.12 OF 2014 OF FAMILY COURT, VATAKARA ----- APPELLANTS/RESPONDENTS: 1 ABDULLA, S/O.ANDRU HAJI, AGED 30, THAZHE PUTHOYOTTIL HOUSE, VANIMEL P.O., VADAKARA TALUK, KOZHIKODE DISTRICT. 2 AYISHA, W/O.ANDRU HAJI, AGED 52, THAZHE PUTHOYOTTIL HOUSE, VANIMEL P.O., VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV SRI.ABDURAHIMAN VAYALIL PEEDIKAYIL M. MUHAMMED SHAFI RESPONDENT/PETITIONER: BAREERA, D/O.AHMMAD, 21 YEARS, OTHAYOTH THAZHA KUNIYI HOUSE, P.O.KADAMERI, VADAKARA TALUK, KOZHIKODE DISTRICT-673 101. BY ADVS. SMT.KAVERY S THAMPI SRI.K.M.SATHYANATHA MENON THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON 28.02.2025, ALONG WITH CO.93/2016, MAT. APPEAL NO.567/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946 CO NO. 93 OF 2016 AGAINST THE ORDER DATED 04.02.2016 IN OP NO.12 OF 2014 OF FAMILY COURT, VATAKARA ----- CROSS OBJECTOR/RESPONDENT: BAREERA, D/O. AHMMAD, OTHAYOTH THAZHA KUNIYIL HOUSE, P.O.KADAMERI, VADAKARA TALUK, KOZHIKODE DISTRICT-673 101. BY ADVS. SRI.K.M.SATHYANATHA MENON SMT.KAVERY S THAMPI RESPONDENTS/APPELLANTS: 1 ABDULLA, S/O. ANDRU HAJI, THAZHE PUTHOYOTTIL HOUSE, VANIMEL P.O., VADAKARA TALUK, KOZHIKODE DISTRICT-673 506. 2 AYISHA, W/O. ANDRU HAJI, THAZHE PUTHOYOTTIL HOUSE,VANIMEL P.O., VADAKARA TALUK, KOZHIKODE DISTRICT-673 506. BY ADV SRI.ABDURAHIMAN VAYALIL PEEDIKAYIL THIS CROSS OBJECTION HAVING COME UP FOR HEARING ON 28.02.2025, ALONG WITH Mat.Appeal.357/2016 AND CONNECTED CASE, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN FRIDAY,

2. For the sake of convenience, the parties are hereinafter referred to as the husband, the mother, and the wife.

3. According to the wife, at the time of marriage she was provided with 56 sovereigns of gold ornaments. She was provided with 10 and sovereigns of gold :-
2 :-

ornaments as Mahar. All the ornaments were taken by the husband without leaving anything to wear even during the social visit and on festivals. Subsequently she was returned 2.5 sovereigns of gold ornaments. After the delivery of a child her father again provided her with 12 sovereigns of gold ornaments. The parties fell apart. The original petition was filed seeking return of 63.75 sovereigns of gold ornaments or its value.

4. The husband filed a counter statement wherein

the claim of the wife that she had 56 sovereigns of gold ornaments at the time of marriage was denied. It was contended that she had only very small quantity of gold ornaments. The allegation that all the gold ornaments were taken by the husband was denied. It was contended that the entire gold ornaments of the wife was always with her. The claim that after the delivery of the child

the wife was provided with 12 sover

:- 3 :- sovereigns of gold ornaments with the Apollo Gold at Vadakara. He prayed for dismissal of the Original Petition.

5. The Family Court found that there is no direct

evidence with regard to the quantity of gold that belonged to the wife. It was observed that the husband admitted that the wife had 40.5 sovereigns of gold ornaments. A decree was accordingly granted for return of the same.

6. With regard to the claim for past maintenance,

though the claim was for three years, the Family Court granted a decree for only six months. Though the claim was for 6,000/- for the wife and 2,000/- for the child

who was aged less than one and a half years, the decree was for 4,000/- and 2,000/- respectively for the wife and the child. The learned counsel for the husband submits that the husband is not very serious with regard to the challenge against the same.

-: 4 :-

7. We have heard learned counsel on either side.

8. With regard to the quantity of gold ornaments,

no documentary evidence is available on record. In the written statement, the fact that the wife was possessed of some gold ornaments is not denied. The claim is that the quantity is less. It is also stated that the wife claimed the quantity to be 40.5 sovereigns. He has not disputed such claim of the wife.

9. Ext.A1 is the certified copy of the complaint filed by the husband before the Judicial First Class Magistrate's Court, against his in-laws, alleging illegal detention of his wife and child. Therein at paragraph 6 it is stated thus :-

(6) 3--- 40 1/2 25 1--- 3--- - - 3--- - 1--- .

-: 5 :- Therefore, even according to the husband, the wife had 40.5 sovereigns of gold ornaments. His claim is that, from out of the said quantity, 25 sovereigns were pledged by her father at one Apollo Gold Jewellery Shop at Vadakara. In the said background it could be concluded that the wife had 40.5 sovereigns of gold ornaments at the time of marriage.

10. With regard to the pledging of 25 sovereigns of gold ornaments by the father with the Apollo Gold Jewellery, an application was filed as IA 681/2015 to

direct the Manager of the Apollo Gold Jewellery to produce the documents relating to the pledging of gold ornaments by the wife or her father. The manager filed a statement to the effect that there is no such transaction. Therefore, the claim of the husband with regard to the pledging of 25 sovereigns of gold ornaments by the wife's father fails. -: 6 :-

11. With regard to the claim for the remaining

quantity of gold, there is no evidence. The learned counsel for the wife would argue that, the wife in her oral evidence has deposed with precision the details of the gold ornaments and hence there is no reason to disbelieve her. According to the counsel, her evidence is to be accepted and the quantity of the gold ornaments as claimed by her is to be upheld. However, it is to be noticed that, as PW1 it was her definite case that the ornaments were purchased from a particular jewellery shop, in connection with the marriage. She could have produced some documents or examined some person from the shop to prove the said fact. On the failure to do so, we are unable to uphold her claim regarding the quantity of the gold ornaments solely relying on the oral evidence. Hence we are in agreement with the finding of the Family

Court that the wife had 40.5 sovereigns of gold :- 7 :- ornaments with her at the time of marriage.

12. Even according to the wife 2.5 sovereigns of

gold ornaments were returned to her. It is only probable that the wife must have been in possession of ornaments for her daily wear which would approximately be around 5 sovereigns. After making such deductions the remaining quantity could be rounded off to 33 sovereigns. The decree of the Family Court is liable to be modified accordingly.

13. The learned counsel for the husband would argue

that there is no evidence with regard to the entrustment and misappropriation. The Family Court has proceeded as if in Ext.A1 the husband admitted about the entrustment and misappropriation of gold by the husband. The relevant statements in Ext.A1 could at best be taken only as admission regarding the quantity of the gold ornaments and not regarding entrustment or :- 8 :-

misappropriation, it is argued. While we are in agreement with the learned counsel on such contention, we do notice that it is the definite case of the wife that a week after the marriage the husband had required her to hand over all the gold

ornaments to his mother. As PW1 she has vouched to such statement. It is the case of the husband that whatever gold ornaments the wife had is with her. It is difficult to believe that at the matrimonial home, the wife had kept 40 sovereigns of gold ornaments in her exclusive possession. With regard to entrustment, it would be very difficult to secure evidence. In the normal course of events, it is very improbable that the wife would have kept the ornaments with herself. (See *Bexy Michael v. A.J. Michael* [2010 (4) KHC 376], *Pankajakshan Nair v. Shylaja & Anr.* [2017 (1) KHC 620], *Rajesh P.P. & Anr. v. Deepthi P.R.* [2021 (4) KLT 455]). The Family Court has, on the evidence, chosen to accept the evidence of the wife with

-: 9 :- regard to entrustment. No material is brought to our notice to dislodge the said finding. Hence the same calls for no interference.

14. The wife has filed a cross objection

challenging the decree of the Family Court insofar as it did not grant decree for the entire quantity of the gold ornaments as claimed by her. We have already declined

such claim. Yet another ground on which the cross objection is filed is with regard to the value of the gold ornaments. The Family Court has directed return of the gold ornaments or its value which the Court fixed at 20,000/- per sovereign. The Court could not have fixed such value since the value is a fluctuating one. The

wife is entitled to the value at the time of realisation. [See: *Syamini S. Nair & ors. v. Sreekanth. R* (2022(3) KHC 145), *Vipin Kumar v. Remyamol* (2023 SCC OnLine Ker 7675)] . The cross objection is liable to be allowed to the said extent. -: 10 :-

Resultantly, Mat Appeal 357 of 2016 is allowed in part. The quantity of the gold ornaments liable to be returned will stand re-fixed at 33 sovereigns. The Cross Objection filed therein will stand allowed to the extent of allowing the wife to realise the market value of the 33 sovereigns of gold ornaments at the time of realisation. Mat. Appeal No.567 of 2016 will stand dismissed. Parties to bear their respective costs. Sd/- SATHISH NINAN JUDGE Sd/- SHOBA ANNAMMA EAPEN JUDGE
kns/- //True Copy// P.S. To Judge