

Sreeja.B. vs Aneeshkumar

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Court : Kerala

Decided On : Oct-21-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Mat.Appeal/28/2018

Appellant : Sreeja.B.

Respondent : Aneeshkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR FRIDAY, THE 21ST DAY OF OCTOBER 2022 / 29TH ASWINA, 1944 MAT.APPEAL NO. 28 OF 2018 AGAINST THE JUDGMENT DATED 15.02.2017 IN O.P.NO.421 OF 2013(OLD NO.381 OF 2013) ON THE FILE OF THE FAMILY COURT, OTTAPPALAM APPELLANT/PETITIONER: SREEJA.B. AGED 26 YEARS D/O. CHEMBRAVALAPPIL BABU KATHIRAVAN, RESIDING AT SREEJA NIVAS, MUTHALIYAR THERUVU, SHORANUR VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121. BY ADV. S.SATHISH KUMAR

RESPONDENTS/RESPONDENTS: 1 ANEESHKUMAR AGED 35 YEARS S/O.SWAMINATHAN, CHEMBRAVALAPPIL, MUTHALIYAR THERUVU, SHORANUR VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121. 2 SWAMINATHAN S/O. CHEMBRAVALAPPIL MANIKYAN,

CHEMBRAVALAPPIL,MUTHALIYAR THERUVU, SHORANUR VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121.

3 MALLIKA W/O.CHEMBRAVALAPPIL SWAMINATHAN, CHEMBRAVALAPPIL,MUTHALIYAR THERUVU, SHORANUR VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121.

4 SURESHKUMAR S/O.CHEMBRAVALAPPIL SWAMINATHAN, CHEMBRAVALAPPIL,MUTHALIYAR THERUVU, SHORANUR VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121.

5 DEEPA W/O.CHEMBRAVALAPPIL SURESHKUMAR, CHEMBRAVALAPPIL,MUTHALIYAR THERUVU, SHORANUR VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679 121.

BY ADV. SRI.P.JAYARAM

SRI K.RAMANI - SR ADVOCATE FOR APPELLANT THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING ON 28.09.2022, THE COURT ON THE 21.10.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Ajithkumar, J This appeal under Section 19 of the Family Courts Act, 1984 arose on the judgment in O.P.No.421 of 2013 on the file of the Family Court, Ottappalam. The appellant has filed the said O.P. for recovery of gold ornaments from the respondents. The O.P. was dismissed as per the judgment dated 15.02.2017.

2. The appeal was admitted to file on 06.03.2018. An

interim order that any alienation of the scheduled property belonging to respondents No.2 and 3 will be subject to the result of the appeal, was granted on that day.

3. Heard the learned Senior Counsel Sri.K.Ramani appeared on instruction for the appellant and also Sri.P.Jayaram, the learned counsel appearing for the respondent.

4. Marriage of the appellant with the 1st respondent

was solemnised on 05.05.2011. They resided together for three months and the 1st respondent left for Sharjah thereafter. But he lost his job and returned after two months. They resided together thereafter, but discord erupted in their marital relationship. There arose criminal case and other

litigations. The appellant filed O.P.No.751 of 2013 claiming return of 57 sovereigns of gold ornaments said to have been entrusted with the respondents after the marriage and was misappropriated by them. The specific contention of the appellant is that in the evening of the day of marriage, all the gold ornaments of the appellants were entrusted with the 2nd respondent since that was the custom prevailing among the members of their community and on a later occasion, 7 sovereigns of gold ornaments were given to the 1st respondent. The 1st respondent took away 11 sovereigns of gold ornaments and Rs.20,000/- from the almirah kept in the house of the appellant on 20.07.2012. After developing marital discord, the petitioner demanded the ornaments back but the respondents did not oblige.

5. The respondents refuted the contentions of the appellant. Although it is true that disputes arose between the

spouses, there was no occasion for taking away or misappropriation of the gold ornaments of the appellant by any of the respondents. It is untrue that the appellant had 50 sovereigns of gold at the time of the marriage. There is no custom of entrusting the gold ornaments with the father-in-law

in their community. Ever after the marriage, the 1st respondent had been residing in the house of the appellant. The ornaments of the appellant were not entrusted with the 2nd respondent or any other respondent. All the ornaments that adorned by the appellant at the time of marriage were with her. It is incorrect that 7 sovereigns of gold ornaments were later given to the 1st respondent. The allegation that the 1st respondent took away 11 sovereigns of gold ornaments and Rs.20,000/- from the almirah of the appellant on 20.07.2012 is also incorrect. Thus the respondents denied the liability of returning any gold ornaments to the appellant.

6. The appellant and his father were examined as PWs 1 and 2. Exts A1 to A6 were marked on the side of the appellant. The 1st respondent is RW1 and his father is

RW2. Exts.B1 to B4 were marked on the side of the respondents. The Family Court after analysing the evidence brought on record found that the evidence tendered by the appellant was insufficient to prove that 50 sovereigns of gold ornaments were given to the appellant at the time of her marriage and that the said ornaments along with 7 sovereigns

allegedly given later were misappropriated by the

respondents. The assertion of the appellant that there exists a custom in their community of handing over the gold ornaments of the bride to the father-in-law on the same day is found not proven. Lack of any independent evidence and non-reliability of Ext.A1 were pointed out as the reasons for discarding the evidence of the appellant.

7. The learned senior counsel appearing for the

appellant would submit that the Family Court should not have taken such an unrealistic view in the matter of burden of proof and sufficiency of evidence. No one is expected to keep the bill for the purchase of ornaments at the time of marriage. Despite that the appellant produced Ext.A1 which has been duly proved by PW2 who made the payment for the purchase of the ornaments and to whom it

was issued. Therefore the oral testimonies of PWs 1 and 2 coupled with Ext.A1 and photographs produced in court would be sufficient to prove the case of the appellant. It is contended that the Family Court stating flimsy reasons discarded all such evidence and illegally rejected the claim of the appellant.

8. The learned counsel appearing for the respondents on the other hand would submit that a false story of custom

regarding entrustment of ornaments was projected by the appellant, but she did not adduce any independent evidence regarding prevalence of such a custom. It is pointed out that despite claiming that so many persons including her grandparents were present at the time of handing over of the ornaments in the evening of the day of marriage, no such person has been examined in court. Ext.A1 is only an estimate

written in a plain paper. Since its author has not been examined, it cannot be relied on. There is inconsistency with respect to the purchase of gold ornaments in the evidence tendered by the appellants. Pointing out such deficiencies and inconsistencies in the evidence, the respondents maintain that the claim of the appellants was rightly rejected by the Family Court.

9. In a civil case, a fact needs to be proved by preponderance of probabilities. Strict proof as in a criminal trial cannot be insisted on. But on a meticulous analysis of the

evidence tendered by the parties to the litigation, the court should be in a position to believe the fact asserted exists or atleast would be able to consider that existence of the asserted fact is so probable that a prudent man, under the circumstances of that particular case, act upon the supposition that the fact is true.

10. The assertions regarding entrustment and

misappropriation of gold ornaments are contained in paragraph nos.3 and 5 in the petition. It is alleged that the respondents demanded to hand over 50 sovereigns of gold ornaments given to the appellant at the time of marriage to them which she obliged. Later, 7 sovereigns of gold given to the appellant by

her mother were obtained by the 1st respondent. Another allegation is that on 20.07.2012, the 1st respondent discretely took away 11 sovereigns of gold and Rs.20,000/- from the almirah in the house of the appellant. The relief claimed by the appellant is for the return of 57 sovereigns of gold saying that the same was misappropriated by the respondents. Thus from the averments itself, there arises inconsistency. It may be assumed that the appellant intended to aver that the gold ornaments taken away from the almirah are the 7 sovereigns of ornaments her mother gave to her subsequent to the marriage. That inconsistency may be treated as an inadvertent mistake crept in the pleadings.

11. Both PWs 1 and 2 deposed in court that the

ornaments given at the time of marriage was 50 sovereigns and all the said ornaments were entrusted with the 2nd respondent in the evening of the day of marriage itself. Neither of them has a case that ever thereafter, any such ornament was given to the appellant. During cross examination, to a specific question, whether she had an anklet at the time of marriage, her answer was that she did not remember. She added that she wore only 10 to 25 sovereigns of gold ornaments at the time of marriage. Although her examination continued quite for a long time, that aspect was not clarified or explained. In that context, the version of PW1 while deposing before the Judicial Magistrate of First Class, Ottapalam in M.C No.29 of 2013, which stands in complete contradiction to what has been stated before the Family Court assumes importance. The version before the Magistrate Court was that the misappropriation of ornaments by the respondent took place during the period of one year from the date of marriage. Such a telling contradiction makes it impossible to believe the version of PW1 and also PW2 without there having some independent evidence.

12. Ext.A1 is an estimate issued from one Akshaya Jewellery, Shornur. No one can do impossible things. If such a document alone was issued at the time of the purchase, the

appellant could produce that only in court. During the examination, PW1 took the stand that she did not know anything about Ext.A1. It is true, it was PW2, her father who purchased the gold ornaments. He stated during cross examination

that he obtained a printed receipt when purchased the gold ornaments and he entrusted the same with his

lawyer. No such document is produced in court. He once stated that availing Rs.8 lakhs as loan, he purchased the gold ornaments. Later he stated that 25 sovereigns of old ornaments and Rs.2 lakh were given in the jewellery for the purchase of 50 sovereigns of gold. In the light of the said conflicting versions and non-production of the printed receipt, evidence of PW2 becomes doubtful.

13. RW1 and RW2, respondents Nos.1 and 2

respectively deposed in court totally denying the allegation that they misappropriated 57 sovereigns of gold. Both of them deposed that no gold ornaments belonging to the appellant were entrusted with them. They have explained that from the 1st day of the marriage itself, the appellant was residing in her house only and there was no occasion for entrusting the gold

ornaments with the 2nd respondent. The houses of the appellant

and the respondents are at a distance of 10 to 20 meters. Therefore, there is not much relevance where they were residing together. But when the assertion that the ornaments were handed over to the 2nd respondent at his house and evidence tendered by the appellant in that regard is inconsistent and unsupported by any independent evidence, the said fact gets importance.

14. RWs 1 and 2 categorically denied receipt of

gold. There is a serious allegation that 7 sovereigns of gold and Rs.20000/- were practically stolen by the 1st respondent on 20.07.2012 from the house of the appellant. Regarding the allegation of assault on the appellant on 20.06.2012, a complaint was filed in police. But, why no complaint regarding the alleged stealing of ornaments and money, which also is a grave offence, was not given is a matter that requires explanation. On considering the said nature of the evidence, we are of the view that the materials furnished by the appellant is insufficient to prove, even by preponderance of probabilities, that the appellant had 50 sovereigns of gold at the time of marriage and also that the same and another 7 sovereigns of

gold ornaments were misappropriated by the respondents. The Family Court considered and appreciated the entire evidence on record, in its proper perspective. We are of the view that there is no sufficient reason to hold that the findings of Family Court are wrong on facts or in law. Hence this appeal is liable to be dismissed.

The appeal is therefore dismissed without any order as to costs. Sd/- ANIL K.NARENDRAN JUDGE Sd/- P.G. AJITHKUMAR JUDGE PV

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