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Ismail vs Surumi

Ismail vs Surumi

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Court : Kerala

Decided On : Aug-30-2019

Judge : Honourable Mr.Justice a.M.Shaffique,Honourable Mr.Justice N.Anil Kumar

Appeal No. : Mat.Appeal/663/2012

Appellant : Ismail

Respondent : Surumi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE & THE HONOURABLE MR.JUSTICE N.ANIL KUMAR FRIDAY, THE 30TH DAY OF AUGUST, 2019 / 8TH BHADRA, 1941 Mat.Appeal.No.663 OF 2012 AGAINST THE JUDGMENT IN OP(OS) 564/2009 DATED 07-07-2012 OF FAMILY COURT, ALAPPUZHA APPELLANTS:RESPONDENTS 1 TO 3:- 1 ISMAIL, AGED 32 YEARS, S/O.IBRAHIM, KAKKATTU HOUSE, ILLATHUPADI, EDAVAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM. 2 HAJIRA, AGED 50 YEARS, W/O.IBRAHIM, KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM. 3 IBRAHIM, AGED ABOUT 56 YEARS,

KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM. BY ADVS. SRI.K.MOHANAKANNAN SMT.A.R.PRAVITHA RESPONDENTS: PETITIONER & 4TH RESPONDENT :- 1 SURUMI, AGED 20 YEARS, SURUMI MANZIL, THURAVOOR P.O., CHERTHALA, PIN-688524. 2 RIJAS, AGED 29, S/O.IBRAHIM, KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM-682502. R1-2 BY ADV. SRI.SAJEEVAN KURUKKUTTIYULLATHIL R1-2 BY ADV. SRI.P.K.MOHAMMED PUZHAKKARA THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 22.08.2019, ALONG WITH Mat.Appeal.725/2012, THE COURT ON 30-08-2019 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE & THE HONOURABLE MR.JUSTICE N.ANIL KUMAR FRIDAY, THE 30TH DAY OF AUGUST 2019 / 8TH BHADRA, 1941 Mat.Appeal.No.725 OF 2012 AGAINST THE JUDGMENT IN OP(OS) 564/2009 DATED 07-07-2012 OF FAMILY COURT, ALAPPUZHA APPELLANT:PETITIONER :- SURUMI, AGED 23 YEARS, W/O. ISMAIL, SURUMI MANZIL, THURAVOOR P.O, CHERTHALA. BY ADVS. SRI.P.K.MOHAMMED PUZHAKKARA SRI.T.K.HASSAN RESPONDENTS:RESPONDENTS :-

1 ISMAIL, AGED 35 YEARS, S/O.IBRAHIM, KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM - 682 502. 2 HAJIRA, AGED 53, W/O. IBRAHIM, KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM - 682 502. 3 IBRAHIM, AGED 59 YEARS, KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM - 682 502. 4 RIJAS, AGED 32 YEARS, KAKKATTU HOUSE, ILLATHUPADI, EDAVANAKKADU VILLAGE, KOCHI TALUK, ERNAKULAM - 682 502. R1-4 BY ADV. SMT.A.R.PRAVITHA R1-4 BY ADV. SRI.K.MOHANAKANNAN THIS

MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON

22.08.2019, ALONG WITH Mat.Appeal.663/2012, THE COURT ON 30-08-2019 DELIVERED THE FOLLOWING: :-3-:

JUDGMENT

N.ANIL KUMAR,J: These are connected appeals against the

judgment in OP(OS) 564/2009 on the file of the Family

Court, Alappuzha. By judgment dated 7.7.2012, the court below allowed the original petition in part, allowing the petitioner to realise an amount of `14,00,000/- (including `5,00,000/- towards patrimony and `9,00,000/- towards value of 90 sovereigns of gold ornaments) with 6% per annum from the date of petition till the date of realisation from respondent 1 to 3 and all their assets. Original Petition as against the fourth respondent was dismissed. Challenging the judgment, respondents 1 to 3 filed Mat.A.No.663/2012 before this Court. The petitioner filed Mat.A.No.725/2012 contending that the court below failed to consider the present value of the gold ornaments allowing the original petition. The parties and proceedings are hereinafter referred to as 'the petitioner' and 'the respondent' according to their status in O.P. (OS)No.564/2009 unless otherwise stated. :-4-:

2. Facts in brief are stated hereinbelow:-

The Petitioner and the first respondent are husband and wife. Respondents 2 and 3 are the parents of the first respondent and the fourth respondent is the younger brother of the first respondent. The Petitioner and the first respondent belong to Muslim community and their marriage was solemnised on 20.8.2007 at the residence of the petitioner in accordance with the custom prevailing in their community. They lived together as husband and wife at the residence of the respondents. The

petitioner was given 100 sovereigns of gold ornaments and `5,00,000/- towards patrimony at the time of marriage. The first respondent was employed in Dubai at the time of marriage. Respondents 2 and 3 got back her gold ornaments except the thali chain, ear rings,two bangles and one wedding ring, when the petitioner had left for Dubai along with the first respondent-her husband. She was under the bona fide impression that the gold ornaments would be kept in safe custody. However, she came to know later that the entire gold ornaments were already disposed of. At the time of marriage, the :-5-: petitioner was made to believe that her husband was doing business in Dubai. When she reached Dubai, she came to know that her husband was only a Salesman in a shop. He was leading a life not in line. Hence, within a shortwhile, she and her husband returned to the native place and thereafter, her husband was again sent back to Dubai with the assistance of her relatives. According to her, when she was in her native place, the respondents treated her with cruelty and she was not even provided with food for so many days. When the harassment continued, the petitioner left the matrimonial home and returned to her parental house. However, she was forcibly taken back to the marital home by the first respondent. In connection with the same, her father filed a Habeas Corpus petition before this Court. She was produced before the court on 24.4.2009 and she was compelled to submit that she was not in detention due to fear and threat from the respondents. Thereafter, she was brutally assaulted by respondents 1 to 3 and she was rescued by the neighbors. On 15.5.2009, respondents 2 and 3 took her to her parental house on which day she was admitted :-6-: to the Government Hospital, Thuravoor. The petitioner was compelled to open bank accounts in Dhanalakshmi Bank at Kuthiyathode by the first respondent and he obtained blank signed cheques from her. She apprehends that there is every likelihood of misusing the cheques by the first respondent. The marriage between the petitioner and the first respondent has been broken down irretrievably. Hence, the petitioner approached the court below seeking to return 90 sovereigns of gold or `9,00,000/- towards its

price in market and `5,00,000/- towards patrimony.

3. Respondents 1 to 4 filed joint written statement

contending that the marriage was solemnized only on 12.8.2007 and not on 20.8.2007. According to them, there was no demand for gold and patrimony by the respondents. The parents of the petitioner were not financially sound to provide 100 gold sovereigns and `5,00,000/- at the time of marriage. The petitioner was wearing some gold ornaments at the time of marriage. She was given a thali chain, at the time of marriage. Respondents 2 and 3 did not receive her gold ornaments :-7-: as alleged. All the gold ornaments were returned to her parents. It was further contended that the first respondent was discharging all marital obligations and the spouses were leading a happy married life. The petitioner herself is responsible for the problems. She had left for her parental house at her own volition and her father filed habeas corpus petition against the respondents with a view to victimise them.

4. Pws.1 to 4 were examined on the petitioners'

side and marked Exts.A1 to A10 and A10(a). The second respondent was examined as RW1 and Ext.B1 was marked. 5.Admittedly, petitioner filed O.P.No. 565/2009 for dissolution of marriage on the ground of cruelty and it was allowed on 16.9.2011. Hence, it is not necessary to discuss and decide as to whether the petitioner had treated the first respondent with cruelty. In O.P.565/2009, divorce was granted on the ground of cruelty. The

judgment has become final. Hence, the finding thereon is

binding between the parties.

6. Petitioner as PW1 deposed that she was given 101

:-8-: sovereigns of gold and `5,00,000/- at the time of marriage to the first respondent. Except her 10 sovereigns of gold, the remaining gold ornaments were taken away by the respondents and misappropriated. She adduced evidence to show that the amount was collected by subscribing a chit for `3,50,000/- in the name of her mother-PW4 from the Kerala State Financial Enterprises and `1,50,000/- was paid subsequently with a view to purchase landed property in her name. She also stated that at the time of marriage, her father was having a good job in Gulf and her father paid `2,00,000/- to the first respondent for procuring a visa. That apart, household articles i.e., washing machine, steel almirah and a colour television worth `40,000/- also were given. In addition to the above, she would say that she had wearing apparels worth `30,000/- and they were in the custody of the respondents. She also adduced evidence that the first respondent also obtained so many blank cheques from her and they were misused in connection with his rent-a-car business against which proceedings under Section 138 of the the Negotiable Instruments Act are pending. Ext.A6 is the :-9-: photocopy of a scrap of daily dated 10.3.2009 showing that there was forgery in respect of rent-a-car business and the first respondent was arrested by the Police. Ext.A4 is the certificate dated 11.3.2011 of the KSFE Ltd. issued in the name of PW4 stating that she had prized the chit amount for `3,50,000/- on 26.3.2008. Ext.A7 is the certificate dated 6.11.2010 from Sulthana Jewellery, Kodungallur stating that the petitioner's parents purchased gold worth `7,17,788/- from the jewellery. PW3 is one Shaheed. He had attended the betrothal and marriage of the petitioner as an invitee by her father. He stated that there was an agreement between the parties to give 101 sovereigns of gold ornaments to the bride and the same was given at the time of marriage together with `5,00,000/-. There was a demand for `10,00,000/-. However, it was agreed to give the balance within a year. PW4 stated that `5,00,000/- was paid subsequently by collecting the funds from Ext.A4 and `1,50,000/- was paid by her husband. She further stated that in addition to the above, two bangles weighing 1.5 sovereigns of gold as a custom

to the petitioner. Her elder son gave a ring of 1 :-10-: sovereign to the first respondent. Five and a half sovereigns of gold were also given to the petitioner by her relatives. PW2 is the Proprietor of Sulthana Jewellery, Kodungalluur. He would say that the gold ornaments were purchased from his jewellery and he identified Ext.A7 certificate dated 6.11.2010.

7. The first respondent did not enter the box.

According to him, the petitioner was having few gold ornaments. He also stated that there was no entrustment of gold ornaments or cash as alleged. On the strength of Ext.B1 Power of Attorney, second respondent was examined as RW1 before the court. It is well settled proposition of law that the Power of Attorney Holder is not able to disclose the personal matter touching the couples. In fact, the assertions made by the petitioner and the evidence let in before the court below are not controverted. There is cogent evidence to show that the petitioner was financially sound and she was given 101 sovereigns of gold ornaments and `5,00,000/- at the time of marriage. Exts.A2 to A10 series of photographs show that the wife was adorned with more than 101 sovereigns :-11-: of gold ornaments at the time of marriage. Although subsequent payments to the respondents were alleged by the petitioner, in addition to the amount of `5,00,000/- already paid, the court below did not accept the same due to paucity of evidence in this regard.

8. In a matrimonial dispute, the prime liability is

always with the husband. Considering the fiduciary relationship between the parties as husband and wife, the husband is bound to act as a trustee for the wife in respect of gold ornaments and money entrusted to him and his close relatives in connection with the marriage. For the present case, it is brought out in evidence that immediately after the marriage, the couples left for Dubai where the husband was gainfully employed. According to the petitioner, the amount was entrusted to the

respondents 1 to 3. Even if the amount was entrusted to the respondents jointly as contended, the same was only for the benefit of the first respondent. It is the case of the petitioner that when she left for Dubai along with her husband, the entire gold ornaments, except gold ornaments for day-to-day use were entrusted to :-12-: respondents 2 and 3. According to her, she came to know that the gold ornaments were misappropriated by them when she had returned from Dubai on account of marital dispute between the petitioner and the first respondent. The circumstances would indicate that the respondents 2 and 3 received the gold ornaments from the petitioner when she had left for Dubai. They had also received `5,00,000/- from the parents of the petitioner at the time of marriage. Considering the facts and circumstances of the case, we think, it is just and proper to fix 50% of the liability on the respondents 2 and 3. First respondent, being the husband of the petitioner, we are of the view that the second and third respondents received the money and gold ornaments from the petitioner for and on behalf of the first respondent. The court below granted 6% interest per annum from the date of petition till realisation. The interest granted is modified at 6% with effect from the date of judgment passed by the court below till the date of realisation.

9. The petitioner filed Mat.A.No.725/2012 on the

ground that the court below failed to appreciate the claim of the petitioner for return of 90 sovereigns gold ornaments or the value thereof as `9,00,000/-, which was :-13-: the value of gold ornaments on the date of original petition. According to the learned counsel for the petitioner, the court below allowed the petition in part allowing the petitioner to realise `5,00,000/- towards patrimony and `9,00,000/- towards value of gold ornaments without taking into consideration of the value of gold ornaments on 7.7.2012. Going by the judgment, it is clear that the court below did not consider the present value of the gold while allowing to realise `9,00,000/- towards value of 90 sovereigns of gold ornaments. Hence, the decree stands modified directing the respondents to realise

90 sovereigns of gold ornaments or in the alternative, the market value of the gold ornaments as on the date of passing the judgment and also `5,00,000/- towards patrimony with 6% interest per annum from the date of judgment till date of realisation from the respondents 1 to 3 and all their assets. The liability of respondents 2 and 3 is limited to 50% of the amount awarded with interest. In the result, Mat.A.No.663/2012 stands allowed in part as hereunder:- :-14-:

1. The interest @ 6% p.a. awarded by the court below

from the date of petition till date of realisation for the amount awarded stands modified. The interest is granted @ 6% p.a. from the date of judgment passed by the court below till the date of realisation.

2. The liability of respondents 2 and 3 to pay the amount awarded with interest is limited to 50% and the rest of the amount with interest shall be paid by the first respondent.

3. In all other respects, the judgment of the court below

stands confirmed. There will be no order as to costs. Mat.A.No.725/2012 stands allowed. The petitioner is allowed to recover 90 sovereigns of gold ornaments or in the alternative, the sum equal to that of the market value of the gold ornaments on the date of passing the judgment i.e.,7.7.2012 from the respondents 1 to 3. There will be no order as to costs. Sd/- A.M.SHAFFIQUE, JUDGE sd/- N.ANIL KUMAR, MBS/ JUDGE

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