

K.Radha vs Sivasankaran

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Court : Kerala

Decided On : Oct-30-2019

Judge : Honourable Mr.Justice a.M.Shaffique,Honourable Mr.Justice T.V.Anilkumar

Appeal No. : Mat.Appeal/712/2012

Appellant : K.Radha

Respondent : Sivasankaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFIQU & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 Mat.Appeal.No.712 OF 2012 AGAINST THE JUDGMENT IN OP 212/2009 DATED 12-03-2012 OF FAMILY COURT, PALAKKAD APPELLANT/1ST PETITIONER: K.RADHA AGED 46 YEARS D/O.KORU, KARIYAMPATTA VEEDU, ARAVAKKAD DESOM, VADAKKUMPURAM AMSOM, OTTAPALAM TALUK, PALAKKAD DISTRICT. BY ADV. SRI.P.JAYARAM RESPONDENTS/RESPONDENT & 2ND PETITIONER:

1 SIVASANKARAN AGED 56 YEARS S.O.GOVINDAN, KOLLATHUMKUNDIL VEEDU, CHERUMUNDASSERY AMSOM, DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT-679 512. 2 SHIBU SANKAR AGED 19 YEARS S/O.K.RADHA, KARIYAMPATTA VEEDU, ARAVAKKAD DESOM, VADAKKUMPURAM AMSOM, OTTAPALAM TALUK, PALAKKAD DISTRICT-679 512. R1 BY ADV. SRI.K.B.ARUNKUMAR THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 24.10.2019, THE COURT ON 30.10.2019 DELIVERED THE FOLLOWING: :-2-: Dated this the 30th day of October, 2019

J U D G M E N T

T.V.ANILKUMAR, J.

The first petitioner in O.P.No.212 of 2009 on

the file of the Family Court, Palakkad, is the appellant herein. She filed the original petition claiming past and future maintenance for herself and for her minor son at the rate of Rs.3,000/- per month and also for recovery of value of 25 sovereigns of gold ornaments and cash amount of Rs.25,000/- alleged to have been entrusted with the husband, who is the sole respondent in the original petition. The court below granted past and future monthly maintenance to the mother and

son at the rates of Rs.2,000/- and Rs.1,500/- respectively charged over petition B schedule properties. As regards her claim for return of cash amount and value of gold ornaments, original :-3-: petition was dismissed. Challenging the dismissal

as well as seeking enhancement of maintenance

original petition, was arrayed as 2nd respondent in this appeal.

2. She was married to 1st respondent on

14.3.1985. The 2nd respondent minor son is 16 years and studying in Plus 2 standard. The first child who is a daughter was already given in marriage. Her

case is that at the time of marriage she was adorned with 25 sovereigns of gold ornaments and was given cash amount of Rs.25,000/-. The husband who was employed in Gulf, returned after three years and he went to Rajasthan and worked as a mining employee. It is alleged that her life in

Rajasthan with 1st respondent was unbearable on account of mental and physical cruelties and also his suspicious character doubting her chastity. :-4-: She therefore left his company with children since 9.2.2009. When he started harassing her outside the house, she instituted a petition under the provisions of Protection of Women from Domestic Violence Act, 2005. During her life with 1st respondent, he took away her 25 sovereigns of gold

ornaments and misutilised the cash amount

February, 2009, 1st respondent failed to maintain

her and the minor son, despite of his having sufficient means to maintain them. The appellant does not have any means of her own and she is not getting any income from 28 cents of land which alone is in her possession. The 1st respondent, on the other hand, has been possessing bank deposits and is drawing substantial amount of interest and also has landed property in his name. Therefore, she claimed monthly maintenance of Rs.3,000/- from

:-5-: him for herself and minor son and further sought

to recover value of 25 sovereigns of

misutilised for meeting his private needs.

3. The 1st respondent in his objection denied the allegations of entrustment of gold and cash with him. He stated that to his knowledge, the appellant had only 5 sovereigns of gold ornaments at the time of marriage, which she always possessed with her. He denied having received any

cash amount from her or utilised it for his purposes. He said that after completing his job for three years in Gulf since his marriage with the appellant, he lived in Rajasthan as a mining labourer for 15 years and all this time, he used to maintain

the appellant and children. After giving up his employment at Rajasthan, he came back to his native place in 2004 and got engaged :-6-: in coolie work. According to him, the appellant

had not joined him in Rajasthan where he was leading a lonely life. In 2005, it came to his notice that the appellant was maintaining illicit connection with one Murali and she had joined him in lottery business investing her share of money. A matrimonial discord followed in their life and she abandoned him in the month of February, 2009 and therefore he has no liability to maintain her. He has been maintaining the children to the best of his ability. He denied having any means and stated that he has only minimum wages received as a labourer for his source of livelihood. He denied getting any interest from bank deposits as alleged by the appellant. On the other hand, he alleged

that the appellant has independent source of livelihood. Thus he opposed all the reliefs claimed by the appellant.

4. Before the court below, the appellant did :-7-:

not adduce any evidence, except giving oral evidence as PW1. No documents were produced from her side. The 1st respondent got examined as RW1 and examined another independent witness as RW2 and produced Exts.B1 to B5(d) documents. The court

below after examining the evidence on record held

that appellant failed to prove that she was adorned with 25 sovereigns of gold ornaments at the time of marriage and the probabilities of the case suggested that she had only 9 sovereigns of gold ornaments to possess at the time of marriage. It then took the view that there was no sufficient evidence to prove that either the gold ornaments

or any cash was entrusted by her with th

liable, but it refused to award the appellant and son monthly maintenance at the full rate as claimed in the original petition since he was only :-8-: a coolie and

further he was advancing to old age.

5. The appellant is aggrieved by the impugned

judgment of the Family Court and has sought to

reverse the dismissal of her claim for value of gold ornaments and cash, and to enhance the monthly maintenance to be awarded at the rates claimed by her in the original petition.

6. We heard the learned counsel appearing on both sides.

7. It is contended by the learned counsel for

the appellant that the evidence on record was overlooked by the court below and her case that there was entrustment of gold ornaments and cash was wrongly rejected. It was also contended that the court below should have considered the fact that entrustment could not be proved otherwise than through the evidence of spouse in matrimonial matters. It was further argued that the possession of landed property by the 1st respondent was not :-9-: taken into account while granting claim for maintenance to the limited extent of Rs.2,000/- and Rs.1,500/-.

8. The serious contention raised in this appeal by the appellant is that the evidence as

regards the entrustment of gold and

impugned judgment that the court below assumed, after looking at the photographs produced in the case, that the appellant was adorned with only 9 sovereigns of gold ornaments at the time of marriage. This may or may not be correct. RW1, the 1st respondent, however, denied that she had 25 sovereigns. His admitted case is that she had only 5 sovereigns which was always possessed by herself. RW2 an independent witness, in whose house premises the marriage was conducted, said that he witnessed the appellant being adorned only :-10-: with 5 sovereigns of gold ornaments at the time of marriage. It is significant to note that when PW1 was cross examined and confronted with photographs marked as

Exts.B1 and B5 series, she admitted that 25 sovereigns which she claimed, could not be located from the photographs shown. This itself is enough to doubt her claim for 25 sovereigns as suspicious. She did not have any cash bill or estimate in proof of her claim, since, according to her, the ornaments were made by a goldsmith. For no good reason, his evidence was not brought on record. None of her parents was also examined to prove the actual weight of gold ornaments possessed by her at the time of marriage. Same lapse happened in seeking to establish her case that cash amount of Rs.25,000/- was given to her on the occasion of marriage. None of the participants, in whose presence the cash amount is claimed to have been given to 1st respondent, was :-11-: examined. All these aspects when taken together provide sufficient grounds to hold that appellant could not establish her case of entrustment as convincing. In the pleadings, she failed to specify any particular date on which, the cash amount was given. In the evidence, she made an improvement that cash was given eight days before the marriage. The testimony of PW1 without being corroborated by some independent evidence, is not legally sufficient to prove her case that 1st respondent was entrusted with cash amount.

9. Even assuming that she had 25 sovereigns of gold and cash also, there is nothing to show that there was entrustment of her assets with him. Entrustment in legal implication does not mean mere handing over or parting of assets of wife to husband and in order to constitute entrustment, the assets handed over should be on an understanding that they will be returned whenever :-12-:

demanded back. Looking at the evidence of PW1, there is nothing to suggest that assets handed over were on any implied understanding that they should be returned. She said that with the value of gold ornaments and cash amount, he purchased a jeep. It escapes our understanding as to how this purchase could be a misutilisation of money as alleged. Purchase of jeep cannot be said to be a personal investment and by all means, it must have benefited the whole family. In one part of her

testimony, she said that he took ornaments whenever he was placed in difficult circumstances in life. This, too, cannot be said to be an entrustment, since there is

nothing to suggest that it was ever followed by an understanding to return the ornaments back. In any view of the matter, there is nothing before us to interfere with the finding of the court below that the appellant failed to prove the allegation of :-13-: entrustment. Therefore, rejection of her claim for money is not worth interfering in this appeal.

10. Now comes the question as to whether she

is entitled to get enhancement of maintenance at the rate of Rs.3,000/- as claimed in the original petition. According to her, the appellant has 1 acres of land. RW1 did not deny this. She also claimed that he was drawing Rs.10,000/- per month towards interest from deposits made in banks. This allegation was denied by RW1. There is no evidence to show that he was drawing such a huge income from deposits made in any bank. He admitted that he has an account with SBI, Ottappalam, but has no

sufficient money. He explained that petition B schedule properties do not yield any substantial income for pulling on his life and a good part of it has not been cultivated at all. He has, on the other hand, made an allegation that the appellant has partnership in lottery business, which she, :-14-: however, denied in her testimony.

11. He has also made an allegation that it was he who purchased under Ext.B3 sale deed 31 cents of land in the name of PW1 using his own funds and therefore itself, he was not liable to be burdened

with any further liability to maintain the appellant. We are not going into this aspect of the matter since that question is not relevant in the nature of claims requiring decision in the original petition. Be that as it may, there is nothing on record to hold that the 1st respondent is capable of maintaining the appellant and minor son at the rates beyond what was fixed by the

court below. The evidence adduced by

:-15-: future maintenance does not require to be interfered with. The impugned order of the Family Court is liable only to be confirmed. In the result, the appeal

fails and it is dismissed. All pending interlocutory applications are closed. Sd/-
A.M.SHAFIQUE JUDGE Sd/- T.V.ANILKUMAR JUDGE ami/

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