

Amar vs Haseena

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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/502/2013

Appellant : AMAR

Respondent : Haseena

Judgement :

Mat.Appeal.502/2013 1

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.502 OF 2013 AGAINST THE ORDER/JUDGMENT IN OP
1492/2009 DATED 28-12-2012 OF FAMILY COURT, NEDUMANGAD
APPELLANT/S:

1 AMAR, AGED 31 YEARS, S/O.ANVARUDEEN, R/A.PALAZHIL, PARAYIL EDAVA DESOM, EDAVA VILLAGE, CHIRAYINKEEZHU TALUK, REP BY HIS POWER OF ATTORNEY HOLDER AND MOTHER MRS.FAMLA, W/O.ANVARUDEEN, AGED 50 YEARS, R/A.PALAZHI PARAYIL EDAVA DESOM, EDAVA VILLAGE,CHIRAYINKEEZHU TALUK. 2 ANVARUDEEN, AGED 61 YEARS, S/O.MOHAMMED KUNJU, R/A.PALAZHI, PARAYIL EDAVA DESOM, EDAVA VILLAGE, CHIRAYINKEEZHU TALUK. 3 MRS.FAMLA, AGED 50 YEARS, W/O.ANVARUDEEN, R/A.PALAZHI, PARAYIL EDAVA DESOM, EDAVA VILLAGE, CHIRAYINKEEZHU TALUK. BY ADVS. SRI.BABU KARUKAPADATH SRI.KANDAMPULLY RAHUL SRI.MITHUN BABY JOHN SRI.K.A.NOUSHAD SRI.J.RAMKUMAR SMT.M.A.VAHEEDA BABU

Mat.Appeal.502/2013 2 RESPONDENT/S: HASEENA, AGED 27 YEARS, D/O.SAINUDEEN, R/A.HASEENA MANZIL, CHILAKKOOR DESOM, VARKALA VILLAGE, CHIRAYANKEEZHU TALUK. R1 BY ADV. SRI.BOBBOY JOHN THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat.Appeal.502/2013 3

JUDGMENT

A.M.Shaffique, J.

Appeal is filed by the respondent in O.P.No.1492 of 2009 on the files of the Family Court, Nedumangad. By judgment dated 28.12.2012 the Family Court permitted the petitioner in this case to realize an amount of 34,50,000/- from the respondents and their assets with cost.

2. The short facts of the case are as under:

3. The petitioner and the 1st respondent got

married on 14.06.2009.

According

Prior to the marriage, an amount of 15,00,000/- was collected from the parents of the petitioner in two installments towards dowry. Rs.5,00,000/- was deposited in a Post office Savings Bank Account and a Maruthi Alto car was also given for

the use of the couple. Petitioner

respondent claimed that he was a graduate engineer, later it was revealed that he was not even an engineer and has no job at all. 4. It is stated that the amount received from her parents was utilized for settling the debts of the

family and for reconstruction of the house.

gold ornaments under the pretension that the same will be kept in a locker facility. Petitioner submits that the respondents had sold the gold and the money was utilized for their personal needs. Thereafter, she was being harassed demanding more dowry and accordingly petitioner's parents arranged 50 sovereigns of gold ornaments to be given. She was also threatened with Talaq.

4. On account of matrimonial issues, the couple got separated. But in the meantime, all the

gold ornaments belonging to her had been appropriated. She was manhandled and she sustained burn injuries. She approached the police and a criminal case was filed under Sections 324 and Mat.Appeal.502/2013 5 498(A) IPC. Altogether, towards the value of the gold and money paid, a claim was made for 34,50,000/-.

5. Respondents denied the allegations. It is alleged that respondents 1 and 2 were working abroad. According to them, they have not received any amount and all the gold ornaments, car as well as fixed deposit are in the custody of the petitioner. They also denied having committed any act of cruelty.

6. As evidence in the case, PW1 to PW3 were

examined on behalf of the wife and DW1 to DW4 were examined on behalf of the husband. Exts.A1 to A12 and B1 to B6 were the documents marked. Family Court after considering the evidence found that version of the petitioner is believable and accordingly granted decree for recovery of the amount as stated above.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents.

8. The learned counsel for the appellant Mat.Appeal.502/2013 6 would submit that there is no evidence to prove payment of 15,00,000/- and entrustment of any gold ornaments to the appellants. It is pointed out that 15,00,000/- is alleged to have been paid prior to the marriage. Absolutely no details of this payment is produced. That apart, according to PW1 the payment was made by her father, who was not examined in the case. Whereas, only her

brother had been examined. Certain additional documents had been produced, which are photographs taken during the 2nd marriage of the petitioner. It is pointed out by the learned counsel for the

appellants that whatever ornaments seen in the photographs which are produced in the case are the very same ornaments which the bride was wearing during her second marriage. It is also pointed out that court below had not properly appreciated the evidence in the proper perspective. On the other hand, the learned counsel for the respondent while

supporting the judgment of the Family Court contended that once the court below had arrived at a finding regarding the appropriation of gold Mat.Appeal.502/2013 7 ornaments and money based on sufficient materials, there is no reason for this Court to interfere with the same. Reference is also made to the

judgment of this Court in Muhammed Davood and

another v. Hafsath and another [AIR 2010 KER 21].

9. There is no dispute about the fact that

while appreciating the evidence in a matrimonial case, the court has to take into consideration all the factual circumstances involved in the matter. From the pleadings and materials produced before Court it has to be considered whether the findings are based on sufficient materials. But still the evidence regarding the quantity of gold ornaments

that the bride was wearing at the time of marriage, the payment of parental share, which is usually done without any documents etc. have to be considered taking into account the credibility of the case put forward by either side.

10. In the case on hand, the petitioner had

spoken about entrustment of gold ornaments and appropriation of the same by the appellants in her pleadings as well as in evidence and clearly Mat.Appeal.502/2013 8 stated about the payment of Rs.15,00,000/-. She was adorned with 101 sovereigns of gold ornaments and about 50 sovereigns of gold ornaments was given subsequently. From the photographs produced by the appellants as additional documents it is not possible for us to discern whether it was the same gold ornaments she was wearing at the time of 2nd marriage.

11. The court below had placed reliance on certain admission that are made by DW1 during the

evidence. In order to appreciate the evidence of the parties it is also relevant to take note of the pleadings. In the written statement filed by the respondents they do not have a specific case regarding the gold ornaments that the bride was wearing at the relevant time. They just made a blanket denial and have taken up a contention that all gold ornaments are with her. Such a contention is not believable. When a bride is taken to the matrimonial home normally the husband and all the

family members will have a clear understanding about the gold ornaments that the bride brings to Mat.Appeal.502/2013 9 the matrimonial home. To plead ignorance about the same itself indicates that they are not stating the true and correct facts before the court.

12. In the case in hand it is admitted by DW1 that gold ornaments that the bride was wearing may be around 70 sovereigns. This fact is not admitted in the pleadings. During the cross examination of DW1 a specific question was asked whether the petitioner had come with either 75 or 100 sovereigns of gold ornaments. Her answer was that

the bride had come with such gold.

appellant to conceal the actual facts only for the purpose of denying the obligation.

13. Normally when a bride brings such huge

quantity of gold ornaments to the matrimonial home, it is quite normal that the gold will be kept in safe custody. What happened to the gold ornaments of the bride after she had come to the matrimonial home is not borne out from the Mat.Appeal.502/2013 10 pleadings of the appellant. Petitioner had also a case that subsequently 50 sovereigns of gold was

given and there was demand for further dowry. Exts.A8 and A9 series of photographs were shown, wherein DW1 admits that she had received the gold ornaments. Later she took a contention that it was

her own gold which was shown,

unbelievable. The fact remains that the appellants have not disclosed true and correct facts and their attempt was to wriggle out of their obligation to return the gold ornaments to the petitioner.

14. Petitioner has also claimed Rs.15 lakhs which was received by the respondents as dowry. It is specifically contended that the amount received as dowry was utilized for construction of the house by respondents and for discharging their debts. In fact, a written statement is filed by the 3rd respondent as Power-of-Attorney holder for respondents 1 and 2. Other than a blanket denial Mat.Appeal.502/2013 11

of paragraph 3 wherein the petitioner had referred to having paid Rs.15 lakhs prior to the marriage towards dowry, there is no specific denial. That apart, respondents do not have a case that the petitioner's family do not have the capacity to pay any such amount. They have not even stated that she was adorned with any gold ornaments at the time of marriage which was pleaded by her in paragraph 3 itself. During evidence, PW2 and PW3 had supported the case of the petitioner that the aforesaid amount was handed over by the parents of the petitioner before

marriage. Though this fact has been denied by the appellant during evidence, when we have arrived at a conclusion that petitioner's version is to be believed, there is no reason to doubt the genuineness of the said claim. Hence, we sustain the view of the Family Court in directing refund of the said amount as well.

15. In such circumstances, the Family court

was justified in believing the version of the petitioner and directing to pay the value of gold Mat.Appeal.502/2013 12 ornaments and money. We do not think that any grounds have been made out for interference. Matrimonial appeal is dismissed. No costs. Sd/- A.M.SHAFIQUE JUDGE Sd/- T.V.ANILKUMAR DG JUDGE

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