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Abdul Jabbar vs Vahitha

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Court : Kerala

Decided On : Oct-30-2019

Judge : Honourable Mr.Justice K.Harilal,Honourable Mrs. Justice Annie John

Appeal No. : Mat.Appeal/328/2014

Appellant : Abdul Jabbar

Respondent : Vahitha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.HARILAL & THE HONOURABLE MRS. JUSTICE ANNIE JOHN WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 Mat.Appeal.No.328 OF 2014 (C) AGAINST THE JUDGMENT IN OP 64/2012 DATED 24-02-2014 OF FAMILY COURT, THRISSUR APPELLANT/RESPONDENTS: 1 ABDUL JABBAR @ SALIM, S/O. ABDUL KHADER, PALLITHOTTUNGAL HOUSE, P.O. PORI BAZAAR, KODUNGALLUR VIA, THRISSUR DISTRICT. 2 KUNJUBEEVATHU, AGED 66 YEARS, W/O. ABDUL KHADER, PALLITHOTTUNGAL HOUSE, P.O. PORI BAZAAR, KODUNGALLUR VIA, THRISSUR DISTRICT. BY ADVS. SRI.A.RANJITH NARAYANAN SRI.S.K.SAJU

SMT.A.SIMI RESPONDENT/PETITIONER: VAHITHA AGED 35 YEARS D/O. MUHAMMEDALI, PANIKKAVEETTIL HOUSE, P.O. THRITHALLUR, THRISSUR DIST. PIN-680 619. R1 BY ADV. SRI.N.J.JOHNSON THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat. Appeal No. 328 of 2014 :2:

JUDGMENT

Dated this the 30th day of October 2019

K. HARILAL,J.

The second appellant is the mother of the first appellant, who married the respondent on 06.03.2005. Two children were born out of the said wedlock. Subsequently, their relationship

was has become strained and they fell apart. The respondent filed O.P. No. 64 of 2012 before the Family Court, Thrissur seeking a decree directing the appellants herein to return 295 grams of gold ornaments or its equivalent value of Rs.7,37,500/- and further directing the first appellant to return 13 sovereigns of gold or its equivalent value of Rs.2,65,000/- and the household articles or Rs.80,000/- as its value.

2. It is the specific case of the respondent that at the time

of marriage, she was given gold ornaments and while they were living together, she had entrusted the gold ornaments weighing 295 grams with the first appellant on an assurance that he will return the same as and when required. But, he has not returned the same. Subsequently, their relationship has become strained and she began to live separately from the first appellant.

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Subsequently, the first appellant failed to provide maintenance allowance to the respondent and the children. Consequently, she had preferred MC No. 396 of

2006 before the Family Court. The first appellant has filed O.P. No. 1532 of 2006 before the very same court seeking a decree for restitution of conjugal right. Both the matters settled out of court and they have entered into an agreement dated 29.12.2008 in the presence of the witnesses. As per the said agreement, the first appellant has agreed to return 295 grams of gold ornaments within two years from the date of agreement. But, he failed to keep his words in the said

agreement dated 22.09.2007, as assured by him. Thereafter, again the Mediators intervened and they entered into a second agreement dated 29.02.2008, re-enforcing the terms and conditions in the first agreement dated 22.09.2007. That apart, as per the second agreement, if the first appellant fails to keep his words as assured in the first agreement, the second appellant is liable to perform the obligations of the first appellant. But, the appellants have miserably failed to perform the obligations under the aforesaid agreements and they are liable to return the gold ornaments or its value with interest.

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3. The appellants filed a counter statement inter alia contending that he is not liable to return the gold ornaments or its value as claimed in the petition. According to him, the agreements were executed without knowing the contents of the

same. The second appellant had affixed her signature in the agreement as a witness only and therefore, she is not liable to perform the obligations, if the first appellant fails to perform them. It is also contended that the respondent was not wearing so much gold ornaments at the time of her marriage, though she had some gold ornaments at the time of her marriage. Thus, the appellants emphatically denied the claim for return of gold ornaments or its value. But, at the same time, they admitted the claim for household articles.

4. On the aforesaid pleadings, both parties adduced

evidence, which consists of the oral testimony of the respondent as PW1 and the documentary evidence of Exts.X1 to X6. The first appellant was examined as RW1. No documentary evidence was produced. Exts.X1 to X6 were marked as

witness exhibits. After considering the aforesaid evidence on record, the Family Court passed the impugned judgment directing the appellants herein to

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return 295 grams of gold ornaments or its equivalent of Rs.7,37,500/-. In addition to that, the first appellant is directed to return 13 sovereigns of gold ornaments or its equivalent value of Rs.2,65,000/- and the household articles or its equivalent value of Rs.10,000/- to the respondent. This appeal is filed challenging the findings, whereby the suit stands decreed.

5. Heard the learned counsel for the appellants and the learned counsel for the respondent.

6. The sum and substance of the arguments of the learned

counsel for the appellant is that there is no sufficient pleadings to disclose the entrustment of the gold ornaments and the court below went wrong by relying on Exts.A1 and A2 only.

7. Per contra, the learned counsel for the respondent advanced arguments justifying the findings of the courts below, whereby the appellants are directed to return the gold ornaments or its equivalent value.

8. The point to be considered in this appeal is whether the

respondent has succeeded in proving that the appellants are liable to return the gold ornaments or its equivalent value and household articles to the respondent. In other words, whether Mat. Appeal No. 328 of 2014 :6:

the respondent has succeeded in proving the entrustment of the gold ornaments and the household articles with the first appellant as a trustee. We have gone through the pleadings. It is true that the date and the place where the entrustment were made are not specifically stated in the pleadings. But, we further find that the appellant himself admitted the entrustment of the gold ornaments and the household articles with the respondents in Exts.A2 and A1 agreements executed

between the appellants

and the respondent. It is needless to say that the admitted facts

need not be proved. When the first appellant was examined as RW1, he has admitted the execution of Exts.A2 and A1

documents. It follows that they cannot retract from the said admissions in the court also. Going by Ext.A2, we find that at the instance of the mediators, the first appellant and the respondent entered into Ext.A2 agreement on 22.09.2007 and as per the said agreement, he agreed to return the gold ornaments wearing 215 sovereigns to the respondent within 5 months from 22.09.2007. But, he failed to perform the said obligation cast on her. Subsequently, the Mediators again intervened them and they entered into Ext.A1 agreement on 29.12.2008. As per clause 3

of the aforesaid agreement, the first appellant agreed that he will return 295 grams of gold ornaments within two years from 29.12.2008 and if the first appellant fails to perform the said obligation, the second appellant would perform the same. Thus, by the second agreement, the liability is caste on the second appellant also, in case the first appellant fails to perform his liability. In short, the obligations caste on the first appellant by Ext.A1 agreement was re-enforced on him and the second

appellant by the second agreement dated 29.12.2018. The appellants have no case that the agreement is vitiated by any

kind of vitiating elements. On the other hand, he himself admitted the execution of Exts.A1 and A2 agreements. It follows that he was liable to perform the obligations caste on him under the aforesaid agreement. As regards the household articles, the appellants themselves admitted that they are ready and willing to return the same.

9. In the above analysis, we find that the deficiency in

pleadings will stand cured by the admissions made by the appellants themselves in Exts.A1 and A2 written agreements. Therefore, we find that the respondent has succeeded in proving Mat. Appeal No. 328 of 2014 :8: that the appellants are liable to return money or its equivalent value as found by the Family Court. We do not find any reason to interfere with the aforesaid findings. Hence, this appeal is dismissed. sd/- K. HARILAL, JUDGE. sd/- ANNIE JOHN, JUDGE. Rv Mat. Appeal No. 328 of 2014 :9:

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