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Girija vs Anilkumar

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Court : Kerala

Decided On : Oct-29-2019

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

Appeal No. : Mat.Appeal/345/2014

Appellant : Girija

Respondent : Anilkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.HARILAL & THE HONOURABLE MRS. JUSTICE ANNIE JOHN TUESDAY, THE 29TH DAY OF OCTOBER 2019 / 7TH KARTHIKA, 1941 Mat.Appeal.No.345 OF 2014 AGAINST THE ORDER IN OP 1245/2012 DATED 31-01-2014 OF FAMILY COURT, IRINJALAKUDA APPELLANT/PETITIONER: GIRIJA AGED 42 YEARS W/O.ANILKUMAR, (S/O KURIKKASSERY VEETTIL OMANA AMMA), PARAVOOTHARA DESOM, PARAVUR VILLAGE, NORTH PARAVUR TALUK, ERNAKULAM DISTRICT AND D/O KALLIKKATT KESAVAN NAIR, KEETHOLI, KOTTAPURAM DESOM, METHALA VILLAGE, KODUNGALLUR TALUK, THRISSUR DISTRICT. BY ADVS. SRI.K.S.RAJESH SRI.M.SHAJU

PURUSHOTHAMAN RESPONDENT/RESONDENT: ANILKUMAR AGED 44 YEARS S/O KURIKKASSERY VEETTIL OMANA AMMA, PARAVOOTHARA DESOM, PARAVUR VILLAGE, NORTH PARAVUR TALUK, ERNAKULAM DISTRICT, PIN - 683 520. R1 BY ADV. SRI.R.MANOJ R1 BY ADV. SRI.V.S..BABU GIREESAN CAVEATOR R1 BY ADV. SMT.SINDHU MANOJ THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 08-08-2019, THE COURT ON 29-10-2019 DELIVERED THE FOLLOWING: Mat. Appeal No. 345/2014 :2 :

JUDGMENT

Annie John,J.

Challenging the order dated 31.01.2014 passed by the Family Court, Irinjalakuda in O.P. No. 1245 of 2012, this Mat. Appeal has been filed. The appellant is the petitioner and the respondent is the respondent in the aforesaid OP, which was filed for realization of value of gold ornaments, cash and past maintenance.

2. The case of the appellant is as follows: The appellant was gifted with 50 sovereigns of gold ornaments and Rs.1,00,000/- by the parents at the time of marriage. Out of 50 sovereigns of gold, 40 sovereigns of gold

ornaments and Rs.1,00,000/- were entrusted to the respondent on 10.07.1995. The respondent has received the said properties as a custodian with an assurance that the same will be returned as and when the appellant demands. But, thereafter, the respondent misused the properties without the consent of the appellant and the respondent has deserted the appellant and children. Therefore, the appellant has claimed a

Mat. Appeal No. 345/2014 :3 : sum of Rs.3,06,000/- as lumpsum amount towards the past maintenance from the respondent. She has also claimed Rs.4,72,000/- towards the value of gold ornaments and a sum of Rs.1,00,000/- as cash.

3. The respondent denied the receipt of the ornaments and money and she has argued that the ornaments which were given to the appellant at the time of

marriage were with the appellant itself.

4. On the side of the appellant, RWs 1 to 3 were

examined and Exts.B1 and B2 were marked. The respondent was examined as PW1 and Exts.A1 to A2(C) were marked. The trial court, after considering the evidence, allowed the aforesaid OP in part. Aggrieved by the same, this appeal has been filed.

5. The learned counsel for the appellant contended that

the trial court omitted to see that the marriage of the spouses was on 28.04.1995. The specific case of the appellant is that at the time of marriage, the appellant was given 50 sovereigns of gold ornaments and Rs.1,00,000/- as gift by the parents. Mat. Appeal No. 345/2014 :4 : Soon after the marriage, i.e., on 10.07.1995, the respondent has taken away 40 sovereigns of gold and Rs.1,00,000/- to Mumbai. The trial court has held that there was no eye witness to prove the entrustment and the respondent was directed to pay Rs.1,50,000/- to the appellant as the value of gold ornaments (4000 x 10 sovereigns = 40,000/-) and past maintenance (Rs.1,10,000/- (Rs.3000x12x3=1,08,000/-).

6. The appellant has sought for getting back 40

sovereigns of gold ornaments and Rs.1,00,000/- from the respondent. According to her, the respondent has taken the entire amount and gold ornaments and misappropriated the same. It is an undisputed fact that the marriage between the appellant and the respondent was solemnised on 28.04.1995. Admittedly, the appellant is the legally wedded wife of the respondent. She has filed the present OP for realisation of the value of gold ornaments, cash and also for past maintenance. She has got a specific pleading to the effect that she had received 50 sovereigns of gold ornaments and Rs.1,00,000/-

as gift. Out of 50 sovereigns of gold ornaments, Mat. Appeal No. 345/2014 :5 : Rs.1,00,000/- was entrusted to the custody of the respondent on 10.07.1995. According to her, the respondent, being her husband, would be the trustee of the properties and therefore, he is bound to return the same. Both were living

separately for the last 12 years at the time of disposal of the matter by the trial court. During cross examination, the appellant has deposed that out of 50 sovereigns of gold ornaments, 30 sovereigns of gold ornaments were given by her brother and sister. But, no such pleadings has been mentioned in the petition. It is true that she has examined two witnesses on her side. RW3 is one of the cousin brother of the appellant. He has deposed that the ornaments were purchased from Lekshmi Jewellery. But, admittedly, no scrap of paper was produced on the side of the appellant to prove the purchase of ornaments from the aforesaid jewellery. According to the appellant, the entrustment of the property with the respondent was made on 07.10.1995. No eye witnesses was cited by the appellant to establish this fact. During cross examination, the appellant has deposed that a Mat. Appeal No. 345/2014 :6 : marriage album was prepared in connection with the ceremony of their marriage and that album is with the appellant; but no attempt was made by her to produce the same before court to show the description of the gold ornaments alleged to have worn by her at the time of

marriage. The evidence of the witnesses would prove that they are having hearsay evidence with regard to the pleadings of the appellant. The learned counsel for the respondent has submitted that the parents of the appellant have no financial capacity to give 50 sovereigns of gold ornaments and Rs.1,00,000/- as gift at the time of marriage. The trial was conducted along with O.P. No. 198 of 2012 and the said OP was filed for getting dissolution of marriage by invoking Section 13(1)(a) of the Hindu Marriage Act. So, the above two

OPs were tried jointly and the appellant herein, who is the wife of the petitioner in OP No. 198 of 2012, was examined as RW1. Eventhough the appellant during cross examination, has deposed that she is having the marriage album with her, no explanation has been given to the non-production of album Mat. Appeal No. 345/2014 :7 : containing the photos. The respondent, on the other hand, has produced the album which was marked as Ext.A2. In addition to that, he has produced two photographs, which were marked as Exts.B1 and B2. The appellant, who was examined as RW1, has admitted that Exts.B1 and B2 are related to the photos taken from her matrimonial home. She has further stated that at the time of marriage 'thali' was tied in a thread; but Exts. B1 and B2 did not show the thread

containing the thali tied by her husband.

7. The respondent, when examined as PW1, marked relevant photographs from Ext.A2 album in connection with the solemnization of marriage. Exts.B1 and B2 would show that the appellant was wearing only 6 bangles at the time of

marriage. But, according to the appellant, she was wearing 18 golden bangles at the time of solemnization of marriage. The respondent has marked relevant photographs from Ext.A2 album showing the ornaments which were worn by the appellant at the time of marriage. During cross examination, the learned counsel for the respondent put a suggestive Mat. Appeal No. 345/2014 :8 : question to the effect that she was wearing only 10 sovereigns of gold ornaments at the time of marriage. It is the specific pleading of the appellant that she had received 50 sovereigns of gold ornaments and Rs.1,00,000/- as gift at the time of marriage. However, the respondent had a case that the parents of the appellant had no sufficient financial capacity to give 50 sovereigns of gold ornaments and Rs.1,00,000/- as gift to RW1 at the time of marriage.

8. During cross examination of the appellant, she had

deposed that there is no evidence on her part to prove the entrustment of Rs.1,00,000/- with the respondent/husband. During cross examination, she has reiterated that her relatives had financially aided her to conduct the marriage. Again, she had deposed that her father had given 30 sovereigns of gold ornaments, and her brothers and sisters had given 10

sovereigns of gold ornaments. But, no such pleading was taken by the appellant in the petition. According to the appellant, the entire gold ornaments were purchased from Lekshmi Jewellery and her father had received the bills Mat. Appeal No. 345/2014 :9 : regarding the purchase of gold ornaments. But, she is unable to produce any of the bills regarding the production of gold ornaments by her father. It is the case of the appellant that 40 sovereigns of gold ornaments and Rs.1,00,000/- were entrusted with PW1 on 07.10.1995. But, no witnesses were cited to prove the entrustment. It is pertinent to note that the appellant had left the company of the respondent/husband in the year 2000. According to her, she had

entrusted the gold ornaments to her husband before she left from her matrimonial home; but she did not demand anything from the respondent.

9. Ext.A2 album produced by the respondent would prove that she was not having 50 sovereigns of gold ornaments at the time of her marriage. The appellant has not

produced the album from her custody before this Court. If she had produced the same before court, definitely it would have the best evidence to prove that she was having sufficient gold ornaments at the time of marriage. The case advanced by the respondent is to the effect that the appellant's parents Mat. Appeal No. 345/2014 :10 : have no financial capacity to give 50 sovereigns of gold ornaments and Rs.1,00,000/- as gift at the time of marriage. It is true that the relationship between the appellant as well as the respondent is fiduciary in nature and therefore, the entrustment need not be proved by citing independent witnesses. On the other hand, the learned counsel for the respondent suggested to the effect that the appellant had received only 10 sovereigns of gold ornaments at the time of marriage. Eventhough there was an allegation that she entrusted Rs.1,00,000/- with the respondent, there is absolutely no evidence to prove this fact. The lack of such evidence itself is sufficient to disbelieve the version of the appellant that she had entrusted 40 sovereigns of gold

ornaments and Rs.1,00,000/- on 10.7.1995 with the respondent. So, the case advanced by the respondent is more probable than the case of the appellant. Since the respondent has admitted that she had 10 sovereigns of gold ornaments at the time of marriage, that can only be considered as accountable by the respondent and he has not adduced any

Mat. Appeal No. 345/2014 :11 : evidence to the effect that 10 sovereigns of gold ornaments were taken by the appellant with her at the time when she left

the matrimonial residence. The appellant is only entitled to get 10 sovereigns of gold ornaments as stated by the respondent. There is absolutely no evidence to prove that the appellant was having 50 sovereigns of gold ornaments at the time of marriage and she has entrusted 40 sovereigns with the respondent. On the

strength of the admission on the side of the respondent that appellant was having 10 sovereigns of gold ornaments at the time of marriage, she can claim 10

sovereigns of gold ornaments from the respondent. After analysing the entire evidence, the court below has rightly found that the appellant is entitled to get only 10 sovereigns of gold ornaments. We do not find any ground to interfere with the findings entered by the court below. In the result, this appeal is dismissed. sd/- K. HARILAL, JUDGE. sd/- ANNIE JOHN, JUDGE. Rv Mat. Appeal No. 345/2014 :12 :

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