Gowri Vs. Satish

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SooperKanoon Citation : sooperkanoon.com/381528

Court : Karnataka

Decided On : Aug-03-1990

Reported in : II(1991)DMC350; ILR1991KAR1581

Judge : N. Venkatachala and ;N.D.V. Bhat, JJ.

Acts : Hindu Marriage Act, 1965 - Sections 25, 27 and 28; Family Courts Act, 1984 - Sections 7; Family Courts Act, 1904

Appeal No. : M.F.A. No. 687 of 1983

Appellant : Gowri

Respondent : Satish

Advocate for Pet/Ap. : S.G. Sundaraswamy and ;T.V. Govindaraja Iyengar, Advs.

Judgement :

N.D.V. Bhat, J.

1. The two points which arise for consideration in this appeal are -(1) whether the quantum of the permanent alimony awarded by the lower Court to the appellant is inadequate; and (2) whether the lower Court has erred in refusing to direct the respondent to return the property claimed by the appellant.

2. The facts necessary for the disposal of this appeal, briefly stated, are as under;

3. Appellant and respondent were respectively the husband and the wife. Appellant filed a petition, M.C.No.81/1981. In the Court of City Civil Judge, Bangalore (lower Court') praying for a decree against the respondent for divorce; for permanent alimony and for the return of her articles described in the schedule to the petition. By then, the husband had filed a petition, M.C.No.59/1981, in the lower Court praying for a decree of divorce against the wife. The lower Court, by its common Judgment dated 3-12-1982, allowed M.C.No.81/1981 filed by the wife granting her a decree of divorce and monthly alimony of Rs. 200A However, her prayer for direction to the husband to return her articles was rejected. The lower Court also rejected the petition, M.C.No.59/1981, filed by her husband. Not being satisfied with the quantum of alimony and the refusal to direct the return of her articles, the wife has filed this appeal against the decree in M.C.No.81/1981.

3A. We have heard Sri S.G. Sundaraswamy, learned Advocate for the appellant. Respondent though served in the appeal, was neither present at the hearing nor was he represented.

4. It will have to be seen, in the first instance, as to whether the quantum of alimony awarded by the lower Court is inadequate, as contended for. Sri Sundaraswamy, learned Advocate for the appellant, sought to support his contention by placing reliance on the decision in GENGLER v. GENGLER, 1976(2) All E.R. @ 81. According to him, the lower Courts' approach in deciding the quantum of alimony in the present case, should not have been different from the one pointed out in Gengler's case (supra) thus:

'Now the approach in divorce proceedings is that which was at last approved in Watchtel v. Watchtel (1973) 1 All ER 829, [(1973) Fam 72] by the Court of Appeal, namely that one starts with the wife having one-third of the joint incomes less her own earnings. I need not go into the old cases of Ward v. Ward [(1947) 2 All ER 713, (1948) p.62] and Jones v. Jones [(1929) All ER Rep. 424]. Social conditions and the financial and other status of wives and women have greatly changed since those days. This Court has already said, and I repeat, that there is no reason, in my opinion, why the justices should not start with the one-third approach,

Counsel for the husband realistically agrees that the joint income is the husband's gross income and the wife's net income. That is the correct approach. One takes the gross income, that is his income before tax, because the maintenance order is deducted from his wage or salary before tax is calculated, and the wife's net income because that is all she receives to live on after tax is deducted from her wage or salary. Allowable deductions from a husband's gross earnings are the statutory insurance contributions and travelling expenses to work.'

Though we gave our anxious consideration to the said contention of Sri S.G. Sundaraswamy, we have found it difficult to accede to the same because of the express provisions in Section 25 of the Hindu Marriage Act, 1955 ('the Act'), laying down the approach required to be adopted by Courts in determining the quantum of maintenance under the Act. In other words, when the Act, itself provides the opportunity for determining the quantum of alimony or maintenance to a Hindu wife or husband, it would not be necessary to look back to the history of English Matrimonial Law, for guidance. In this connection, we can usefully refer to the following passage in the commentary of Mulla's Hindu Law (13th Edition) at page 740, which reads as under:

'In view of the express provisions of this section it is not necessary for the Court, while determining the amount of permanent alimony or permanent maintenance to a Hindu wife or husband, to look back to the history of English Matrimonial Law nor need the Court concern itself with any difference or change of opinion expressed in particular cases in England. There is no reason for assumption of a fixed arithmetical rule even in case of allotment of permanent alimony where the decree is only for judicial separation. The mode of assessment of the amount of permanent alimony or permanent maintenance is entirely a matter of discretion of the Court, A rough working rule may have some usefulness in an application for maintenance pendente lite and it is submitted that even if any such working rule is evolved as of some guidance in case of such interim orders it is not necessary nor desirable that for assessment or permanent alimony or permanent maintenance there should be any notional or prima facie rule which has regard to arithmetical proportions. The question cannot be one of arithmetic and must remain entirely of discretion.'

5. As a perusal of Section 25 of the Act would be sufficient to show, how the express provisions contained therein lay down the approach to be made by the Courts determining the amount of maintenance payable to a wife or husband, if and when sought, the same are excerpted;

'25(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under Sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this Section has remarried or, if such party is the wife, that she has not remarried chaste, or, if such party is the husband, that he has sexual intercourse with any woman outside wed-lock, it shall rescind the order.'

6. That the lower Court's approach in the matter of determining the amount of maintenance is based on the provisions of Section 25 of the Act, becomes apparent from a reading of para-21 of its Judgment. We cannot, therefore, find any fault in the approach made by the lower Court in the matter. Sri Sundaraswamy, learned Counsel for the appellant, however, submitted that the lower Court has overlooked the fact that the appellant would need separate residential accommodation, in that, the accommodation she has found in nor parents house, cannot be regarded as a permanent one. It was also urged by him that even otherwise, the amount of alimony awarded by the lower Court cannot be regarded

as adequate, oven on a modest estimate. The submissions made by the learned Counsel for the appellant are not devoid of force.

It is seen that the appellant is admittedly residing with her parents. It is not said by her that she is thinking in terms of having a separate residence. Though possibly the need for the appellant to have a separate residence might have weighed with the lower Court while determining the total amount of permanent alimony payable to the appellant, we find that the amount awarded by the lower Court towards permanent alimony of the wife is rather Inadequate in the facts and circumstances of the case. As can be seen from the provisions of Section 25 of the Hindu Marriage Act, the means of the parties and their conduct are the primary considerations which should weigh with the Court in assessing the permanent alimony awardable thereunder. In the instant case, it is seen that the wife-appellant's gross income is Rs. 1,300/- per month, while the husband-respondent's gross income is Rs. 3,600/- per month. It is also seen, as rightly pointed out by the lower Court in its Judgment, that it is the husband-respondent who was guilty of desertion and cruelty. If regard is had to the totality of circumstances, particularly the lower side of the income of the appellant and the higher side of the income of the respondent and further the requirement of separate residence for the appellant, the amount of Rs. 200/- per month fixed by the lower Court as the permanent alimony payable by the respondent to the appellant-wife appears to be rather inadequate. However, having an over-all view of the matter, we consider that it would be just, proper and reasonable to enhance the monthly maintenance amount made payable by the respondent to the appellant from Rs. 200/- per month to Rs. 350/- per month.

7. What now remains for our consideration is the point as to whether the lower Court was in error in refusing to direct the respondent to return the articles claimed by the appellant as belonging to her. The appellant, in her petition, M.C.No.81/1981, has, among other things, prayed for directing the respondent to return to her, her belongings listed in the schedule to the petition. The articles so listed in the schedule are items 1 to 7. Among other things, the articles include gold jewels, sliver articles, stainless steel vessels, costly German Vioglesnder Camera, new Godrej Almirah, costly silk sarees and vast presentation articles

given at the wedding. The petitioner- appellant has claimed return of the said articles or alternatively their value. It is seen that the lower Court has rejected the said prayer of the plaintiff on the ground that the evidence of the petitioner-appellant adduced with reference to the articles described in the schedule to the petition was not corroborated and also on the ground that there was no evidence to show that these articles were presented at or at about the time of marriage. Sri S.G. Sundaraswamy, the learned Counsel for the appellant contended that having regard to the contents of the reply given by the respondent to the notice issued on behalf of the petitioner as also the tenor of the written statement and the totality of the evidence on record there can be hardly any doubt that the articles described in the schedule to the petition were left with the respondent. In this connection, the learned Advocate invited our attention to the contents of the notice dated 18-6-1980 issued on behalf of the respondent to the petitioner at Ex.P-4 (exhibited for the petitioner in the companion M.C.No.59/1981). Our attention was further invited to the contents of Ex.P-3, a notice dated 28-5-1980 issued on behalf of the respondent to the Advocate for the petitioner. Our attention was also invited to the contents of paras 13 and 14 of the statement of objection as well as para-3 of the evidence of the respondent - Satish. According to him, all the said materials clearly established that the respondent was in possession of appellant's articles in the items described in the schedule to the petition. When appellant's articles were thus with respondent, it was the submission of learned Counsel for the appellant that the provision in Section 27 of the Act did empower the lower Court to grant the decree directing the respondent to return the said articles or to pay their value to the appellant as estimated in the petition.

8. Before adverting to the question as to whether the evidence on record warranted the drawing of an inference that the articles of appellant described in the schedule were with the respondent, it would be necessary to find out as to the scope and ambit of the power available to the Court exercising matrimonial jurisdiction under the Act in the matter of directing the return of articles or property of a spouse to another. Section 27 of the Act which has a bearing on the point reads:

'In any proceeding under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.'

According to Sri Sundarasway, learned Counsel for the appellant the above provision being enacted as an enabling provision, the Court exercising the matrimonial jurisdiction thereunder could grant relief not merely regarding properties belonging jointly to both the husband and wife but also regarding properties exclusively belonging to either of them. In support thereof, our attention was invited to the decision in KAMTA PRASAD v. SMT. OM WATI AIR 1972 Allahabad 152. In the said decision it is observed by the High Court of Allahabad that the Court has the power to pass a decree directing husband to return to the wife her ornaments and other articles. However, he brought to our notice, very fairly, decisions of other High Courts taking a contrary view in the matter. In NANDINI SANJIV AHUJA v. SANJIV BIRSEN AHUJA : AIR1988 Bom239 it is pointed out by the Bombay High Court that Section 27 includes property received individually by a spouse as 'present' at or about the time of marriage, which has come to be as a way of life in the joint use of husband and wife. In SMT. SURINDER KAUR v. MADAN GOPAL SINGH the High Court of Punjab at page 334 the High Court of Punjab and Haryana, has, among other things, pointed out that Section 27 of the Act provides for sharing of that property which the spouses received individually or collectively as presents, at or about the time of marriage, and which had come to be, as a way of life, in their joint use in their day to day living and thus their belongings for the purpose. It is further pointed out in the said case that if matrimony is disputed, such jointly belonging articles would require the attention of the Court to be apportioned between the spouses as a measure of remedial relief. In SHAKUNTALA v. MAHESH ATMARAM BADLANI : AIR1989 Bom353 it is pointed out by the Bombay High Court that Section 27 of the Act confines the jurisdiction of the Court to dispose of only such property that has been presented at or about the time of marriage and which belongs jointly to husband and wife. In SMT. SHUKLA v. BRIJ BHUSHAN MAKKAR AIR 1982 Delhi @ 223 it is observed by the Delhi High Court that the Court exercising the jurisdiction under the Hindu Marriage Act is powerless to make an order regarding

individual properties of spouses. It is further pointed out that neither Order 7 Rule 7 nor Section 151 of C.P.C. can be invoked while exercising jurisdiction under the Hindu Marriage Act. In VINOD KUMAR SETHI AND ORS. v. STATE OF PUNJAB AND ANR. among other things, it is pointed out by the Punjab and Haryana High Court that the express words of Section 27 referred to property, which may belong jointly to both husband and wife. It is further observed that it nowhere says that all the wife's property belongs jointly to the couple or that Stridhana is abolished and wife cannot be exclusive owner thereof. It is also pointed out that the statute expressly recognises that property which is exclusively owned by the wife is not within the ambit of Section 27 and it is concerned only with that property presented at or at about the time of marriage and belonging jointly to the couple. In SARDAR SURINDER SINGH v. MANJEET KAUR it is pointed out by Jammu and Kashmir High Court that under Section 27 of the Hindu Marriage Act discretion cannot be exercised in respect of property exclusively belonging to wife. The Calcutta High Court in its decision in SIBNATH MUKHOPADHYAY v. SUNITA MUKHOPADHYAY : (1988)2CALLT106(HC) has pointed out that the properties which were not belonging jointly to husband and wife are not covered by Section 27 of the Act. In the course of the Judgment, Their Lordships of the Calcutta High Court have made a reference to the observation of the Supreme Court in PRATIBHA RANI v. SURAJ KUMAR AND ANR. : 1985 CriLJ817 With reference to the totality of the decision of the Supreme Court, it is pointed out by the Calcutta High Court that the Supreme Court has quoted the observations in Vinod Kumar Sethi and Ors. v. State of Punjab and Anr. rather approvingly. It is significant to note here that this Court also had occasion to consider the scope of the power of the Court exercising jurisdiction under the Hindu Marriage Act with reference to Section 27 thereof. In KRISHNAN v. PADMA, 1967(2) Mys. L.J. @ 432 a Division Bench of this Court has, among other things, pointed out that money paid to the husband alone and not jointly to the husband and wife cannot be directed to be returned to the wife under Section 27 of the Hindu Marriage Act. It is also pointed out in the said case that under Section 27, the Matrimonial Court gets jurisdiction to make suitable provision with respect to any property which is proved to have been presented at or at about the time of marriage which may belong jointly to both husband and wife.' Then again, a learned single Judge of this Court has, in

the decision in SAI NARAYAN v. PADMINI,1981(1) K.L.J. @ 146 pointed out that the jurisdiction of the matrimonial Court under Section 27 of the Hindu Marriage Act is confined to gifts made at or at about the time of marriage and which may belong jointly to both husband and wife.

9. The decisions of the different High Courts briefly summarised hereinabove, would indeed indicate that there is no unanimity as to interpretation of the provision in Section 27 of the Hindu Marriage Act. It is also seen that the views of the majority of the High Courts are in favour of the proposition that the jurisdiction conferred under Section 27 is of a limited nature. At this juncture, it is necessary to note that the question under consideration also did not directly arise for consideration of and decision by the Hon'ble Supreme Court. The question which arose for consideration and decision of the Supreme Court was as to whether the entrustment of the wife's properties to her husband or in laws would stand transformed into co-ownership and the observations referred to by the Calcutta High Court were only those made in the course of the Judgment of the Supreme Court incidentally. Further, the totality of the decision of the Division Bench of this Court referred to hereinabove, the gist of which is given by the learned single Judge of this Court in Sai Narayan's case would also go to show that the matrimonial jurisdiction of Courts under the Act is confined to gifts made at or at about the time of marriage and which may belong jointly to both husband and wife. We have carefully considered the views reflected in the decisions of different High Courts including those of this Court as also the observations of the Supreme Court in Pratibha Rani's case. As pointed out earlier, the Calcutta High Court has, in its decision in Sibnath Mukhopadhyay's case, explained the import of the observations of the Supreme Court in Pratibha Rani's case. After a careful reading of the decision of the Calcutta High Court and the decision of the Supreme Court, we, with respect, find ourselves in agreement with decision of the Calcutta High Court rendered placing its reliance on the observation made by the Supreme Court in Pratibha Rani's case. Further, Section 27 is required to be interpreted having regard to its own language. The said Section is culled out hereinabove. It is explicit. It does not leave any doubt as to the meaning to be assigned to the expressions therein. The Division Bench of this Court, as already pointed out, has interpreted the provisions in Section 27 in Krishnan v. Padma. Having regard to

the almost unanimity reached in various decisions of High Court, alluded to hereinabove, including the observations of the Supreme Court in Pratiba Rani's case (supra) as to the power exercisable under Section 27 of the Act by a Court, we affirm the view of this Court in Krishna v. Padma (supra) that the jurisdiction of the matrimonial Court exercisable under Section 27 of the Hindu Marriage Act is confined to gifts made at or at about the time of marriage and which may belong jointly to both husband and wife.

10. Sri Sundaraswamy, learned Counsel for the appellant, however, contended that in most of the decisions adverted to earlier, the question as to whether the powers inherent in a civil Court cannot be exercised to give speedy justice to the parties to the litigation, is not considered.

10(A). We have carefully considered this aspect. We are indeed of the view that inherent power cannot include a power to grant relief relating to exclusive property similar to the one conferred under Section 27 of the Act relating to property jointly belonging to both the spouses. We are in respectful agreement with the observations made in this behalf by the High Court of Jammu and Kashmir in Sardar Surinder Singh's case referred to earlier.

10(B). The learned Counsel for the appellant, however, invited our attention to Section 7 of the Family Courts Act, 1984, which has conferred wider jurisdiction on the Family Court including that relating to a suit or proceeding between the parties to a marriage with reference to the property of the parties to a marriage or either of them. In this context, it was submitted by the learned Counsel for the appellant that though the Family Courts Act came into force on 25th May 1987 in the State of Karnataka, that is to say, after the case in appeal was disposed of by the City Civil Court exercising jurisdiction under the Hindu Marriage Act, the provisions of the Family Courts Act can be taken note of by this Court, an Appellate Court, in this pending appeal and grant a decree relating to the relief sought in the petition as to the direction to the respondent for return of the articles described in the schedule to the petition or their value. In this regard, the learned Counsel sought to obtain assistance from the decided cases, which shall be referred to later.

Notwithstanding the view we have taken as to the ambit of jurisdiction exercisable by Courts exercising jurisdiction under Section 27 of the Hindu Marriage Act, the impact of the provisions of the Family Courts Act, 1984, with reference to the powers of the Family Court to exercise jurisdiction in a proceeding between the parties to a marriage with respect to their property or either of them falls to be considered, as it is the Family Court constituted at Bangalore, which would have decided the petition of the appellant if it was pending before it.

11. The Family Courts Act, 1984, was enacted with an avowed objective, viz., with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. The Parliament, in its wisdom, has considered it necessary to spell out the jurisdiction of the Family Court under Section 7 of the Act, which reads as under:

'(1) Subject to the other provisions of this Act, a Family Court shall -

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation - The suits and proceedings referred to in this sub- section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order of injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise -

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973; and

(b) such other jurisdiction as may be conferred on it by any other enactment.'

A careful reading of the aforesaid provisions would go to show that the Family Court shall have and exercise all the jurisdiction exercisable by the District Court or any subordinate Civil Court. Such jurisdiction of the Family Court is extended in respect of both suits and proceedings. However, the suit or the proceedings should be of the nature referred to in the Explanation to Section 7, which is excerpted earlier. Further, the occasion to exercise such jurisdiction may arise under any law for the time being in force. It is significant to notice that 'a suit or proceeding between the parties to a marriage with respect to the properties of the parties to the marriage or either of them' are among the items of suits and proceedings enumerated in the Explanation to Section 7. It is equally significant to notice that the legislature has used both the terms 'suit' or 'proceeding' under Clause (c) of the Explanation to Section 7. Further, the jurisdiction conferred is not merely with reference to the properties of the parties to the marriage but also with respect to the properties of either of them. Having regard to the careful choice of

words employed in Section 7 and keeping in view the preamble portion of the Family Courts Act it is not difficult to discern the intendment of Legislature. We are of the view that the intendment is to confer wider jurisdiction on a Family Court in respect of disputes arising between the parties to the marriage including the dispute relating to their properties or the properties of either of them, obviously, with a view to see that the litigation between the parties in that behalf is settled once for all avoiding the usual expenditure involved in a litigation. It is also clear that the exercise of such jurisdiction may arise either in a suit or in a proceeding. At this juncture, it is indeed necessary to have a clear perspective as regards the meaning of the expression 'proceeding' employed in Clause (c) of the Explanation to Section 7 of the Family Courts Act. The word 'proceeding ' in its general acceptation is a term of wide amplitude and means a prescribed course of action for enforcing or protecting a legal right as also including the necessary steps to be taken whether procedural or substantive. The expression also means forums in which relief is sought before Courts of law or before other authorities, determining rights and liabilities and in which actions are brought and defended and the manner of conducting them and the mode of deciding them. In this connection, the decision in WORKMEN OF M/S. BALI SINGH v. MANAGEMENT can be usefully looked into. Having regard to the same, it would follow that the proceedings under the Hindu Marriage Act is indeed a proceeding which can be brought within the sweep of Clause (c) of the Explanation to Section 7 of the Family Courts Act. Under these circumstances, we have no hesitation to hold that the Family Court has, in a proceeding arising under the Hindu Marriage Act, jurisdiction to decide the dispute relating to the properties of the parties to the marriage as also the property of either of them, though under the Hindu Marriage Act, the jurisdiction of the 'District Court' is confined to gifts made at or at about the time of marriage and which may belong jointly to both husband and wife.

12. If that be so, the next question for consideration is as to whether this Court in this appeal can exercise the powers conferred upon the Family Court having regard to the fact that the Judgment and decree under appeal is not that of the Family Court but is rendered by the 'District Court' the said expression being understood as defined in Section 3(b) of the Hindu Marriage Act, before the Family Courts Act came into force. As pointed out earlier, the Family Court in Bangalore

City was established during the pendency of this appeal. The aforesaid question, therefore, will have to be decided bearing in view what is stated immediately hereinabove. In the decision in LACHMESHWAR PRASAD SHUKUL AND ORS. v. KESHWAR LAL CHOUDHARI AND ORS. It is pointed out that the hearing of an appeal under the procedural law of India is in the nature of rehearing and therefore, in moulding the relief to be granted in a case on appeal, the Appellate Court is competent to take into account even facts and events, which had come into existence after the decree appealed against was made and consequently, the Appellate Court is competent to take into account the legislative changes since the decision under appeal was given and its powers are not confined only to see whether the lower Court's decision was correct according to the law as it stood at the time when decision was given. Similarly, in the decision in NARHARI SHIVRAM SHET NARVEKAR v. PANNALAL UMEDIRAM (1976) 111 SCC @ 203 it is pointed out that if there is a change in procedural law while the matter pending in Appellate Court, such Court is bound to apply the new law. Further a Division Bench of this Court in the decision in PURUSHOTTAM SAKHARAM SHAH v. PARABHU BHARAMASUTAR, 1968(1) Mys. LJ. @ 570 has pointed out that when a jurisdiction is altered during the pendency of a litigation, the jurisdiction to be exercised is the jurisdiction newly created, and not the old one. It is seen that the instant case has arisen out of the existing territorial jurisdiction of Family Court though at the time when the case was decided by the City Civil Court, the Family Court as such had not come into binding. Now that the Family Court is established with respect to the area from out of which the cause of action has arisen, it is clear that the jurisdiction is created by the Family Courts Act. If that be so, as a matter of logical corollary, it will follow that this Court being an Appellate Court can exercise the jurisdiction which the Family Court itself could have exercised had the matter been kept pending before that Court. Under these circumstances, we are of the view that there is no legal impediment for this Court as an Appellate Court, to exercise the jurisdiction which the Family Court itself could exercise.

13. What, therefore, has to be now seen is as to whether in the facts and circumstances of the case, the order of the lower Court refusing to direct the respondent to return the articles described in the schedule or their value to the petitioner by the impugned order is liable to be interfered with.

14. As pointed out earlier, the lower Court has refused the relief in this behalf on two grounds. One is on the ground that the evidence of the petitioner is not corroborated; second one is on the ground that there is no evidence to the effect as to whether these articles were presented at or at about the time of marriage. Having regard to the view taken hereinabove, that it is permissible in this appeal to give direction even with respect to articles exclusively belonging to the petitioner, the second ground on the basis of which the learned City Civil Judge has refused to give the direction with reference to the articles described in the schedule should not present any difficulty. If that be so, it will have to be seen as to whether the totality of evidence on record warrants a finding that the articles belonging to the petitioner or jointly belonging to herself and the respondent are with the respondent and if so, what are the articles and what is their value?

15. It is needless to say that the burden of proof is on the petitioner - Gowri. She has alleged in para-28 of her petition that the respondent is bound to return the jewels, silver wares, sarees, wearing apparels, articles of presentation, furniture and so on described in the schedule. The articles described in the schedule are as under:

'(1) Gold Jewels (a) Necklace of six sovereigns (b) A chain with a big pendent weighing about ten sovereigns, (c) A chain of four sovereigns (d) Two pairs of ear-rings and Jumkhi, (e) Two pairs of bangles of eight sovereigns (f) Two rings studded with rubies and weighing one sovereign valued at Rs. 35,000/-.

(2) Silver articles i.e., (a) full pooja set, (b) two big dinner plates (c) tumblers, (d) pitcher, all worth about Rs. 6,000/- (at the time of marriage).

(3) Stainless steel vessels, full kitchen ware set etc., worth about Rs. 6,000/- (as at the time of marriage).

(4) Costly German Vioglesnder Camera, estimated value Rs. 500/-.

(5) New Godrej Almirah, estimated value Rs. 800/-.

(6) Costly silk sarees - six, other sarees thirty, other clothings like blouse etc., estimated value of Rs. 5,000/-.

(7) Vast presentation articles given at the wedding by invitees, estimated value Rs. 3,000/-.

16. Respondent - Satish in para-15 of his statement of objection has, among other things, averred that in so far as the alleged jewellary, silver ware etc., are concerned, the custody of the same imputed to him has already been denied by him not only in the previous proceeding but also in the notices issued subsequent to the dismissal of M.F.A. No. 1515 of 1979. Then again, at para- 41 of his statement of objection, it is averred by him that the schedule appended to the petition contains an imaginary narration and that he had already stated that the articles mentioned therein are not in his possession and that all the articles which he had in his custody had been admittedly offered by him to the petitioner but were not claimed by her for reasons best known to her and that therefore he is not liable to answer the belated and tall claim of the petitioner in respect of even those articles, the custody of which had been admitted. It is therefore, clear that the respondent does not admit the possession of all the articles belonging to the appellant though he has admitted in substance, the custody of some. It is necessary to note here that the instant respondent has stated that he had offered to return the articles in his custody. At this juncture, it is indeed necessary to see as to what are those articles which he has admitted as having been in his custody. In this connection, Ex.P- 3 - a reply or rejoinder dated 28-5-1980 marked in the course of the evidence of the present respondent (who was examined in the connected petition in M.C.No.59/1981 as petitioner). The said rejoinder was given on his behalf in response to the notice or to be more precise notice reply of the petitioner - Gowri. In Ex.P-2 it was alleged among other things as under:

'He still retains my client's steel almirah, clothes, jewellary, expensive sarees and her personal belongings.'

In response to the same, in the rejoinder at Ex.P-3 issued on behalf of the instant respondent it was stated among other things as under:

'Your client accuses my client that he has been retaining the custody of certain articles statedly belonging to her. Even though he does not admit that all the articles mentioned in your reply notice are with him, he states that almirah certain

sarees and presentation articles which are in his custody are not retained by him illegally but the same has been in his custody only because the reason that in view of the sour feelings that have been developed between your client and my client, she had not taken return of the same till date.'

The averments in the statement of objection put in by the instant respondent will have to be understood in this context and background.

17. It is therefore clear that the admission of the instant respondent is only partial as to the articles in his custody. It is true that on behalf of the instant appellant another reply dated 27-6-1980 as per Ex.P-5 was issued to the instant respondent, mentioning therein the details of the jewels and other articles which tally with the articles described in the schedule and culled out hereinabove. It is also seen that the instant respondent has not replied to the same. However, he has sought to explain the omission at para-16 of his statement of objection. He has stated therein among other things as under:

'In the last notice issued on behalf of the respondent it had been in unequivocal terms stated that the exchange of notices would end with service of the said notice. However, the petitioner who had a fancy of causing notices at frequent intervals had caused the aforesaid notice dated 27-6-1980 which did not merit any reply at all.'

18. It is also necessary to note here that the legal notice referred to by the instant respondent in the portion of statement of objection culled out hereinabove is the notice dated 18-6-1980 which is marked as Ex.P-4. In Ex.P-4 it is stated among other things as under:

'No further complaints from you as have been repeatedly made time and again that my client has retained the custody of the articles stated above will be entertained hereafter.'

It is also relevant to note here that a reference to the earlier notice dated 28-5-1980 is also made in Ex.P-4. Under these circumstances, we are indeed of the view that the fact that Ex.P- 5 is not replied to cannot be made much of. What

would emerge from the exchange of notices at Ex.P-1 to Ex.P-5 is that the instant respondent has only admitted three items viz., Godrej Almirah, certain sarees and presentation articles. Under these circumstances, it was for the appellant to establish by acceptable evidence the precise articles left with the respondent.

19. Petitioner-appellant, has, in the course of her evidence at para-3 stated that on 10-11-1975 when she was left by her mother-in-law she was wearing apparels, i.e., saree, a pair of gold chain and a pair of gold bangles. She has also stated that the chain is Mangalasutra. It is also in her evidence at para-3 therein that P.W.1 did not ask her to return to his house and never stepped into his house. She has further stated that she had given the details of her articles retained by P.W.1 in her petition in M.C.No.81/1981. In para-7, it was suggested to her that she took all her jewels. She has admitted that no inventory of the articles was taken. On the other hand, respondent - Satish has stated in the course of his evidence after referring to the exchange of notices as per Ex.P-1 to P-5 that he continued to retain her articles. In para-7, he has admitted that the Godrej Almirah brought by the present appellant containing certain articles are with him. In his re-examination, he has stated that all the jewellary was taken by the appellant. This is all the evidence on record both oral and documentary.

20. The analysis of the evidence made hereinabove will go to show that petitioner's evidence with respect to the articles said to be in the custody of the respondent is scanty. Sri Sundaraswamy, the learned Counsel for the appellant however, contended that the evidence of petitioner stands corroborated by the admission of the petitioner as per Ex.P-3 as also from the tenor of the statement of objection and the nature of the evidence given by him before Court. The stand taken by the respondent at different stages and the evidence given by him are already referred to hereinabove. We are unable to cull out a wholesale admission on the part of the respondent with reference to the petitioner's claim regarding the articles described in the schedule. It is needless to say that an admission properly so called should be clear, certain and unambiguous before the same can be used to mulct the maker of such admission with legal liability. We are rather unable to find out any such admission on the part of the respondent except with reference to the items relating to Almirah, certain sarees and preservation articles. Further,

petitioner has not produced convincing evidence with reference to the other articles. It is not as if corroboration was not possible. It would have been certainly possible for the petitioner to produce the evidence of her parents in this behalf. No explanation is forthcoming for her failure to examine them or either of them, let alone her failure to examine any independent witnesses in that behalf. Further it is also seen that she has not taken steps to get inventory made of the articles said to be in the custody of the respondent. Under these circumstances, we are not inclined to accept the evidence of petitioner-appellant with regard to the custody of articles described in the schedule except to the extent of the articles admitted by respondent. As already pointed out earlier, respondent has admitted the possession of the Almirah, certain sarees and presentation articles. The same would indeed provide corroboration to the evidence of the petitioner-appellant. At this juncture, it is significant to note that the petitioner in the Schedule to her petition at Sl.Nos. 5, 6 and 7 has given the value of each of the items viz., new Godrej Almirah, sarees and presentation articles, Respondent has not denied the value given in the schedule with reference to the said articles. He has also not claimed any joint right in any of these items. Under these circumstances, we are inclined to accept the version of the petitioner with reference to the estimated value thereof.

21. From what is stated hereinabove, it would follow that the petitioner is entitled to permanent alimony at the rate of Rs. 350/- p.m. instead of at Rs. 200/- p.m. It is also clear that she is entitled to the return of the articles described in the schedule at Item Nos. 5, 6 and 7 or their value. We may point out here that the petition at M.C.No.81/1981 was filed in the year 1981. The respondent has not chosen to produce the articles which he has admitted as belonging to the petitioner and which are admitted to be in his custody. Having regard to the distance of time and the conduct of the respondent, we are of the view that it would be just and convenient to direct the respondent to pay to the petitioner the value of the articles at Item Nos. 5, 6 and 7 which would work out at Rs. 8,800/- (Rupees 800-00 + Rs. 5000- 00 + Rs. 3000-00).

22. In the result, we pass the following order:

i) The appeal is partly allowed. The order dated 3-12-1982 passed by the VIII Additional City Civil Judge, Bangalore in M.C.No.81 of 1981 directing the respondent - Satish to pay monthly maintenance of Rs. 200/- is modified by directing him to pay monthly maintenance of Rs. 350/- (Rupees three hundred and fifty only) per month to petitioner/appellant - Gowri from the date of the petition in M.C.No.81 of 1981.

ii) We set aside the order of the lower Court in rejecting the request of the petitioner to direct the respondent to return her articles. We hereby order that respondent - Satish in M.C.No.81 of 1981 shall pay to the petitioner-appellant the sum of Rs. 8,800-00 (Rupees eight thousand eight hundred only) towards the value of the articles at item Nos. 5, 6 and 7 of the schedule to the petition viz., the Godrej Almirah, the sarees and presentation articles. Her prayer with reference to the other articles described in the schedule is rejected.

iii) Respondent shall pay the costs of this proceeding to the appellant.