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Court : Allahabad

Decided On : May-14-2003

Reported in : AIR2004All126

Judge : Yatindra Singh and ;Mukteshwar Prasad, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 27; Evidence Act, 1872 - Sections 65 and 66

Appeal No. : First Appeal No. 582 of 1998

Appellant : Hemant Kumar Agrahari and anr.

Respondent : Smt. Lakshmi Devi and anr.

Advocate for Def. : R.N. Bhalla, ;S.M. Srivastava and ;Subodh Kumar, Advs.

Advocate for Pet/Ap. : Salil Kumar Rai and ;S.D. Singh, Advs.

Judgement :

Yatindra Singh, J.

1. This case involves diverse emotions -- from happiness to disappointment and then determination to start new life. It also involves the interpretation and scope of Section 27 of Hindu Marriage Act (the Act) as well as jurisdiction of the matrimonial Courts to dispose of exclusive property of the spouses.

FACTS

2. Smt. Laxmi Devi (the wife) was married with Sri Hemant Kumar (the husband) on 30th April 1996. The marriage was not successful. It did not last long; it was not even consummated. According to wife her husband was already having physical relationship with one Sushri Sunita Pathak and continued to have it even after the marriage. Few meetings were held for settlement of dispute between the parties but were unsuccessful. The wife filed a petition for divorce under Section 13 of the Act on the ground of adultery and cruelty. She also prayed for relief for return of the goods/ amount given at the time of marriage and apart from her husband, impleaded her father-in-law and Sunita Pathak in the suit. The defendants denied the case of the wife. The Court below framed necessary issues. The wife examined herself (P.W. 1) and produced two witnesses namely her brother Sri Ram (P.W. 2) and one Shri Mool Chand Gupta (P.W. 3). The defendants examined Hemant Kumar (D.W. 1), one Juggi Lal (D.W. 2) real Mausa of the husband and one Shri Shiv Prakash Kushwaha (D.W. 3) cousin of the husband. The Court below recorded the following findings;

. The husband was having relationship of husband and wife with Sunita Pathak since before the marriage and has continued the same even after it.

. The marriage was not consummated.

. The husband is guilty of cruelty.

. The wife has justifiable reasons to live separately from the husband.

. The goods mentioned in item Nos. 4 and 5 of the plaint and Rs. 75,000/- cash were given at the time of marriage.

On the basis of aforesaid finding, the Court below decreed the suit for divorce and for return of Rs. 75,000/- in cash and goods mentioned at item numbers 4 and 5 of the plaint.

3. The husband and his father have filed this appeal against that part of decree by which the Court below has ordered return of cash and goods mentioned at item

Nos. 4 and 5 of the plaint. The wife has filed cross-objection against that part of decree by which the Court has refused to grant decree for the return of the cash and goods mentioned at item Nos. 1 to 3 and 6 of the plaint. Neither the finding of the Court below that the husband continued to have husband-wife relationship with Sunita Pathak has been challenged in this appeal, nor any one has challenged the decree of divorce granted by the Court below.

POINTS FOR DETERMINATION 4. We have heard Sri Salil Kumar Rai counsel for the appellants and Sri R. N. Bhalla, counsel for Laxmi Devi (Plaintiff-respondent). Following points arises for determination in this case :

(i) Whether the wife is entitled to return of cash and goods?

Whether the return of cash and the goods (mentioned at item Nos. 4 and 5 of the plaint) has been decreed on the basis of inadmissible evidence?

(ii) Whether the goods ordered to be returned are not specific and no decree ought to have been passed?

(iii) Whether the cash/goods were exclusive property of the wife? Whether the Court below had jurisdiction to decree return of the cash/goods?

POINT NO. 1 : THE FINDING REGARDING CASH/GOODS IS CORRECT

5. The counsel for the appellants submitted that the Court below has decreed the return of cash and goods on the basis of photostat copy of minutes of panchayat dated 15-7-1997 : it is secondary evidence and cannot be relied upon.

6. The wife had produced photostat copy of minutes of panchayat. It is alleged to be signed by father of the husband, brother of the wife and is attested by the witnesses. Moolchand Gupta P.W. 3 is one of the witnesses of this document, He has stated that the original was given to the father of the husband. He had also deposed as to what was agreed in the panchayat. Neither the husband, nor any of his witnesses have stated anything about this panchayat. They have also not stated whether father of the husband signed this document or not. Nevertheless the document produced was a photostat copy of the original and secondary

evidence. It was not admissible under Section 65 of the Evidence Act unless notice to produce as contemplated under the Evidence Act was given to the other side. There is no evidence that any such notice was given. It seems an inadvertent mistake on part of the counsel of the wife. However the photostat copy is inadmissible. But the decree may not be set aside if this finding is supported by other evidence on record.

7. The Court can take judicial notice of the fact that in our society parents present gifts to their daughters and son-in-laws. Unfortunately some time it is forced, but often it is voluntary for the bright future of the newly weds. There is presumption that gifts must have been given from girl's side during marriage. In this case the wife produced herself and made a statement about the goods gifted to her during marriage. She has also stated that cash of Rs. 75,000/-was given at 'tilak'. The witnesses produced on behalf the defendant-appellants accepted having received many items, though the gift of Rs. 75,000/- was disputed. According to them only Rs. 5,000/- in cash was given. The trial Court had the opportunity to watch the demeanour of the witness and found the statement of the wife trustworthy on this aspect. We see no reasons to doubt it. The Court below has rightly held that the goods mentioned in item Nos. 4 and 5 of the plaint and cash Rs. 75,000/- were given and this finding is upheld.

8. The Court below has mentioned that no specific thing is mentioned in item Nos. 1 to 3 and item No. 6 and has not ordered for the return of the same. We agree with the findings recorded by the trial Court in this respect also. There is no justification to decree the suit for the item other than those decreed by the Court below.

POINT NO. 2 : MONEY DECREE SHOULD BE PASSED

9. The counsel for the appellants submitted that in item Nos. 4 and 5 of the plaint no details of the specific goods have been mentioned and decree can not be executed.

10. It is correct that specific details of the goods i.e. model, year of manufacturing, size, brand and other specification have not been given in the petition. The wife

also did not disclose them in her evidence. The husband disclosed that the TV. which was given to him in the marriage, was black & white. On the other hand, the wife stated that colour TV was given. Dispute may arise at the time of execution of decree and a number of objections may be raised in the execution proceedings regarding condition of the goods and brand etc. This may cause further delay. The Court without considering these aspects passed the decree for return of goods; perhaps it was influenced by the photostat copy of the minutes of the panchayat where they are so mentioned. We have already held photostat copy to be inadmissible. In view of this, it would be appropriate to modify the decree for return of the goods and to substitute it with a money decree.

11. According to the respondents Rs. 75,000/- cash were given to the marriage. Besides cash, ornaments, refrigerator, colour TV, sofa set, almirah, box etc. were also given. The price of each article was neither given in the plaint nor disclosed in the oral evidence of the wife. However, considering the cash given at the time of marriage, we assess the value of the goods mentioned in the item Nos. 4 and 5 at Rs. 1 lac. The appellants are liable to return Rs. 1 lac (value of goods in item Nos. 4 and 5) and Rs. 75,000/- given in cash (total one lac and seventy five thousand) to the wife. As the appellants are using the goods/cash since marriage between the parties; they are liable to pay simple interest at the rate of 6 per cent on this amount from the date of judgment of the Court below till the date of actual payment.

12. We would like to clarify that no arguments were advanced before us regarding maintenance to the wife and we have not considered it. It would be open to her to claim the same if permissible under the Act.

POINT NO. 3 : COURT BELOW HAD JURISDICTION

13. Counsel for the appellants brought to our notice Section 27 of the Act (see below) and submitted that two conditions are necessary under this section :

(i) The property must have been gifted at or about the time of marriage.

(ii) It must jointly belong to the husband and wife.

According to him, most of the property is exclusive property of the wife and no decree can be passed for their return.

14. Section 27 of the Hindu Marriage Act is similar to Section 42 of the Parsi Marriage and Divorce Act. Both of them provide that the matrimonial Courts have power to deal with the property presented at or about the time of marriage. There is some conflict among the High Courts about the true interpretation and area of operation of these sections. The High Courts disagree whether the Court's are entitled to deal with exclusive property of the parties or not. The Delhi High Court, Orissa High Court, Jammu and Kashmir High Court, and Punjab and Haryana High Court (see below for citation of these cases) have held that exclusive property of the parties cannot be dealt by the matrimonial Courts under Section 27 of the Act and they should seek remedy before regular civil Courts.

15. The Allahabad High Court, Bombay High Court, and M.P. High Court (see below for citation of these cases) have taken a contrary view and have held that exclusive property of the parties can also be dealt by the matrimonial Courts. The Allahabad and M.P. High Court were concerned with the ornaments (stridhana) given to the wife at the time of marriage. The Bombay High Court was concerned with the ornaments given at the time of marriage and some other property that the wife had purchased from her own earnings during marriage i.e. property not presented at or about the time of marriage and exclusively belonging to the wife. This wife has been taken on the basis that Section 27 of the Act does not prohibit the disposal of the exclusive property belonging to one of the parties and matrimonial Courts can deal with it under inherent powers of the Courts.

16. The decision from the Bombay High Court was taken in appeal to the Supreme Court. It was partly overruled in Balkrishna R. Kadam v. Sangeeta B. Kadam, AIR 1997 SC 3562 : (1997) 7 SCC 500 (the Balkrishna case). The Supreme Court held :

'It (Section 27 of the Act) includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression 'at or about the time of marriage' has to be properly construed to include such property which is given at the time of marriage as also the property given before or after

marriage to the parties to become their 'joint property', implying thereby that the property can be traced to have connection with the marriage. All such property is covered by Section 27 of the Act'.

17. In substance the Supreme Court in the Balkrishna case, (AIR 1997 SC 3562) held that property covered under Section 27 must be traced to marriage and should be connected with it. In this case cash and goods were presented at the time of 'tilak' or marriage. The ceremony of 'tilak' is normally held at boy's place : sometimes immediately before marriage and sometimes many days before it; however it is part of marriage. The gifts given at 'tilak' are also property given at or about the time of marriage, they are connected with it. Cash or goods in dispute are property within meaning of Section 27 of the Act as explained in the Balkrishna case.

18. The counsel for the husband submitted that it was not enough that property should have connection with marriage but should jointly belong to the parties. According to him though some of them (sofa, almirah or TV etc.) could be joint property of the parties, but others (jewellery etc.) though presented at the time of marriage were exclusive property of the wife and no decree could be passed in respect of them. With due respect, the Supreme Court did not lay down any such proposition in the Balkrishna case.

19. Matrimonial cases are tried by the District Court and if Family Court has been established then by the Family Court. They are decided by the Senior Judges at the district level and Civil Procedure Code is applicable. The entire proceeding is like a regular suit; though Court is required to conciliate between the parties. The Judges manning matrimonial Courts are senior enough to decide about exclusive property on the regular side. Same procedure is applicable in the matrimonial cases. It is correct that Section 13 of the Family Courts Act declares that a party shall not have right to legal representation, but Court can always permit legal representation. In case complicated questions are involved, permission for legal representation in the family Court is normally granted; more so in a case where complicated questions regarding disposal of property are involved. In case the matter is before matrimonial Court, then it is proper that all disputes relating to the

parties should be settled by one Court at the same time; leaving a part of the dispute to be decided in future in another suit would prolong acrimony and agony. Life should be spent in a fruitful way, rather than wasting it in constant bickering. There seems to be no reason as to why joint property presented at the time of marriage can be disposed of, but exclusive property presented at the time of marriage should be disposed of separately. This will not only result in multiplicity of the proceedings, but will also cause delay in final settlement and start of new life by the parties.

20. Lord Denning in Alien v. Alfred Mc Alpine, (1968) 1 All ER 543 said :

'Law's delays have been intolerable. They have lasted so long as to turn the justice sour.'

It is truer in our country. We must adopt such interpretation as to avoid delay and multiplicity of proceedings.

21. Section 27 uses the phrase 'property presented at the time of marriage, which may belong jointly to both the husband and the wife'. This section has one prerequisite as laid down in the Balkrishna case : the property must be connected with the marriage. So far as the question of property being jointly owned by the parties is concerned, suffice to say that the Section nowhere uses mandatory word 'must' as being suggested by the counsel of the husband; it uses the word 'may'. The phrase 'which may belong jointly' because of the use of the word may -- includes within it penumbra the property which may not belong jointly to the parties. In our opinion, Section 27 of the Act does not confine or restrict the jurisdiction of matrimonial Courts to deal only with the joint property of the parties, which is presented at or about the time of marriage but also permits disposal of exclusive property of the parties provided they were presented at or about the time of marriage. AN OBSERVATION

22. Generally wife is a house maker and stays at home and the husband is the earning member. He earns and acquires property in his own name ; it is treated as his separate property. There is no decision in our country that separate properties of the spouses may be pooled and divided among them; at least we are not aware.

However, in some parts of the world exclusive property of the parties is treated as community property or family asset and is divided between the two at the time of divorce. The reason is that house makers also work but they cannot acquire property as they are not paid in terms of money. It is for this reason that such laws were enacted and upheld in other parts of the world. Should we enact such a provision? Should Section 27 be amended to include joint and exclusive property of the parties that are not presented at or about the time of marriage? Should the matrimonial Courts have power to deal with entire dispute? Will the Courts adopt procedure and interpret the law as done in some other parts of the world under their inherent powers even in absence of such provision? We have to wait for the future to disclose.

CONCLUSION

23. Our conclusions are as follows :

(a) Under Section 27 of the Hindu marriage Act, Matrimonial Courts have jurisdiction to dispose exclusive property of the spouses provided it was presented at or about the time of marriage.

(b) Photostat copy of the minutes of the panchayat was secondary evidence and was not admissible in absence of notice under Section 66 of the Evidence Act. However, the finding regarding cash and goods mentioned in item No. 4 and 5 of the plaint is not vitiated as it can be sustained on other evidence.

(c) The Court below, instead of return of the goods, ought to have decreed the suit for return of their value in terms of money.

24. In view of our conclusion, the appeal filed by the husband and the cross-objection filed by the wife are dismissed. However, the decree passed by the Court below is modified to the extent that the marriage between the parties (Smt. Laxmi Devi and Sri Hemant Kumar) stands dissolved by a decree of divorce. The wife (plaintiff-respondent) shall be entitled to recover a sum of Rs. 1.75 lacs from the appellants (value of the goods mentioned at item Nos. 4 & 5 of the plaint and Rs. 75,000/- given in cash) along with simple interest at the rate of 6 per cent per

annum from 6-10-1998 (date of judgment passed by the Court below) till the actual date of payment. Costs on the parties. Appeal dismissed.

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