

Manish Nema Vs. Sandhya Nema

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Court : Madhya Pradesh

Decided On : Jan-22-2009

Reported in : 2009(2)MPHT267

Judge : Arun Mishra and ;Sanjay Yadav, JJ.

Appellant : Manish Nema

Respondent : Sandhya Nema

Disposition : Appeal dismissed

Judgement :

ORDER

Sanjay Yadav, J.

1. In the present appeal preferred under Section 28 of the Hindu Marriage Act, 1955 the appellant seeks quashment of judgment and decree dated 24-9-2007 passed in Civil Suit No. 55/2007; whereby the Trial Court allowed the application preferred under Section 27 of the Act of 1955 read with Order 7 Rule 7 of the Code of Civil Procedure and Section 151 of CPC preferred by the respondent/plaintiff.

2. Bonding of nuptial rights to which the appellant and respondent were knotted on 16-5-2003 got separated when the marriage was declared a nullity under Section

12(1) (c) of the Act in the proceedings initiated by the respondent when a divorce decree was passed on 12-1-2005.

3. Prompted by the provisions under Section 27 of the Act and Order 7 Rule 7, Code of Civil Procedure read with Section 151, CPC the respondent instituted a suit in the Court of 1st Additional District Judge, Narsinghpur, claiming return of gold and silver ornaments and other articles given as gifts by her parents and relatives at the time of marriage or in alternative recovery of Rs. 1,36,875/- in lieu of 18.25 Tola gold ornaments, Rs. 11,220/- in lieu of silver ornaments and Rs. 58,569 in lieu of articles like almirah, dressing table, cooler, television set etc. The total amount for which the suit was preferred was Rs. 2,06,664/-.

4. Evidence and counter evidence were led and Trial Court after appreciating the same came to uphold the respondent's entitlement for the articles and one gold necklace (3 tola), four gold bangles (1 tola), one set earring (0.25 tola), three gold finger rings (0.50), mangalsutra (1 tola) and two pairs of silver anklets (payals) (20 tola each). The suit was decreed in the terms that the appellant shall return to respondent the aforesaid ornaments and articles or in lieu there of should pay the amount in terms of money at the market rate prevalent at the relevant time after deducting the 'batta'.

5. Appellant criticises the order on the anvil that the Trial Court exceeded its jurisdiction inherent under Section 27. The Trial Court, it is urged, ought to have held the property in question to be a joint property and ought not to have entertained the petition under Section 27 of the Act of 1955.

6. The respondent on its turn supports the impugned order and claims that the Trial Court did not err in decreeing the suit in her favour, rightly holding her right there over being the Stridhan.

7. Section 27 of the Hindu Marriage Act of 1955 provides for that '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'.

8. Fair reading of the aforesaid provision reveals that it is applicable in respect of the property received at or about time of marriage, which may belong jointly to both husband and wife. It empowers the Court while deciding the matrimonial dispute to also pass decree in respect of property which may jointly belong to both husband and wife. It provides the civil remedy to an aggrieved wife or husband as the case may be.

9. The submissions put forth by learned Counsel for the appellant that such powers can be exercised by the Matrimonial Court in a matrimonial dispute and not in a proceeding subsequently initiated under Section 27 under Order 7 Rule 7 of the Code of Civil Procedure read with Section 151 of the CPC.

10. The submissions of the learned Counsel for the appellant loses its hold in wake of judgments rendered by the Division Bench of this Court in *Nirmala Gupta v. Ravendra Kumar* : AIR 1996 MP227 . Wherein placing reliance of judgments rendered by the Supreme Court in *Prathibha Rani v. Suraj Kumar* : 1985 CriLJ817 and *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* : AIR 1962 SC527 , and the judgment rendered by the High Court of Allahabad and Bombay *Kamta Prasad v. Smt. Om Wati* : AIR1972 All153 and *Sangeeta Balkrishna Kadam v. Balkrishna Ramchandra Kadam* : AIR1994 Bom1 , it was observed that provision under Section 151 read with Order 7 Rule 7 of CPC permits a Court in passing a decree in favour of wife or husband as the case may be for return of the property, which may exclusively belong to either of them.

11. For the sake of completeness we note with profit Paragraph 12 of the judgment referred in *Nirmala Gupta* (supra):

It may be noted that the Act is a special enactment governing the matrimonial proceedings between the parties. Section 4(1) of the Code of Civil Procedure reads as under:

4. Savings.- (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law not in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. From

this provisions, it is clear that the procedure prescribed by the special law will not be limited by the Code of Civil Procedure. However, the Act itself adopts the CPC so far as it is applicable in the matrimonial proceedings under the Act and, therefore, all the provisions of the CPC will be applicable to the matrimonial proceedings under the Act. Section 151 read with Order VII Rule 7 of the Code of Civil Procedure will also be made applicable because there is no provision under the Act which bars the application of these provisions of the CPC. Order VII Rule 7 of the Code permits the Court to grant such relief not prayed for as would be just under the circumstances of the case.

12. Having thus considered we do not find any substance in the submission put forth on behalf of the appellant that Trial Court exceeded its jurisdiction inherent under Section 27 of the Act of 1955 or that it committed any error in allowing the application for return of ornament and furniture.

13. In the result, the appeal is dismissed. Parties to bear their own costs.

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