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Sudakshna Vs. Rajendra

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Court : Madhya Pradesh

Decided On : Aug-30-2000

Reported in : I(2001)DMC168

Judge : A.M. Sapre, J.

Acts : Hindu Marriage Act, 1955 - Sections 27 and 28

Appeal No. : F.A. No. 240 of 1995

Appellant : Sudakshna

Respondent : Rajendra

Advocate for Def. : J. Shivpuria, Adv.

Advocate for Pet/Ap. : P.L. Verma, Adv.

Disposition : Appeal dismissed

Judgement :

A.M. Sapre, J.

1. Wife has come up in appeal under Section 28 of Hindu Marriage Act against the judgment/decree dated 30.6.1995, passed in Civil Suit No. 157/93, by learned IXth Additional District Judge, Indore. Facts lie in a narrow compass.

2. Respondent (husband) filed a petition for divorce under Section 13 of the Hindu Marriage Act against the appellant (wife) inter alia on the allegations of cruelty. This petition was contested by the appellant (wife). While contesting the plea of cruelty, it was alleged by her that she is entitled to get her back several items which were given to her by her parents in the marriage and which according to her constitutes her exclusive Streedhan property. In effect, therefore, while opposing the plea of divorce, she claimed a relief of return of her Streedhan property in case if the decree for divorce is passed in favour of husband (respondent).

3. Parties led evidence in the trial. The only issue that was focussed attention and that was also framed was whether acts of wife as alleged by the husband constitutes an act of cruelty, and if so, whether husband is entitled to get a decree of divorce?

4. The Trial Court by impugned judgment and decree accepted the plea of husband and held that on facts pleaded by the husband, a case of cruelty is made out thereby entitling the husband to claim a decree of divorce against her wife i.e., non-applicant (appellant). The Trial Court then considered the plea taken by the wife (NA), in her written statement regarding return of her Streedhan property. In paras 21, 22, 23 and 24, the learned trial Judge discussed this issue with reference to the evidence on record and eventually keeping in view the powers conferred under Section 27 of the Act passed an order confining the same to some items specified in para 24. Accordingly, the learned trial Judge granted a decree of divorce in favour of husband (respondent) and at the same time granted an order against the husband (respondent herein) and in favour of wife (appellant) for return of certain items specified in para 24. It is this order of learned trial Judge which is impugned by the wife in this appeal. The husband (respondent) has not filed any appeal against that part of order directing him to return certain items or its value as specified in para 24 of the impugned order and hence that order to that extent has become final. Even the wife in this appeal though filed under Section 28 ibid has not made any challenge to the grant of decree of divorce against her. In other words, the challenge in this appeal is only for modification of an order passed in her favour for return of Streedhan property. According to appellant whatever she had claimed for return of the property, the entire property should have been

directed to be returned and not in part and hence she is in appeal to claim enhancement and modification.

5. Heard Mr. P.L. Verma, learned Counsel for the appellant and Mr. Jagdish Shivpuriya with Mr. Rajendra Dubey for respondent.

6. In short, the submission of learned Counsel for the appellant (wife) was that Trial Court ought to have awarded a relief of return of entire property that was included in the list filed by the wife. According to learned Counsel in the facts available and evidence led and admission of husband, the entire property should have been returned to her rather than confining it to only small portion of it. In any event, according to learned Counsel a decree for Rs. 11/000/- admitted to have been received should have been passed.

7. In reply, the submission was that of upholding of impugned judgment.

8. Having analysed the submissions and the evidence led, I do not find any material irregularity in the approach of the learned trial Judge in concluding while passing the order in the light of Section 27 proceedings regarding return of articles for which power is given to make provision. In effect, these were the collateral or incidential proceedings arising out of main divorce proceedings filed in Section 13 ibid by the husband. It is while deciding the main proceedings, this plea of wife at her instance was also gone into. The burden to prove as to what was given jointly to husband and wife at the time of marriage to her, what was then actually given by the parents to both at the time of marriage so as to entitle her to claim return of the said articles had to be proved like any other fact. If the Trial Court held while granting the relief to some extent and decline the relief to some extent on the ground that no proof of purchase was filed then in my opinion no fault can be found in such approach. If a particular item was purchased but without bill then to prove this fact, the wife should have examined the person from whom it was purchased and he should have corroborated by his evidence that he sold a particular item to wife or to her father on cash payment without issuing a bill. In substance, therefore, some sort of circumstantial evidence in addition to mere testimony of wife was expected to support the stand of wife. It may be that possibility of giving a particular item cannot be ruled out but at the same time when

the adversory deny the fact then it becomes necessary for the person alleging to prove it like any other fact by leading direct evidence or circumstantial one. Since this has not been done and hence I have no option but to dismiss the appeal by upholding the impugned judgment/decree insofar as it relates to an order passed under Section 27 of the Hindu Marriage Act partly in favour of appellant, I am also in agreement with all other findings contained in para 21, as to what items falls in Section 27 and what do not.

9. It is well-settled that proceedings under Section 27 of the Hindu Marriage Act are not like the ordinary civil remedies of civil suit where all the questions whether a particular property is a Streedhan or not can go into it such question can not be adjudicated in Section 27 proceedings. The operation of this section is confined only to property presented to the parties at or about the time of marriage and which belongs jointly to them and it does not belong to those articles which exclusively belong to wife. The jurisdiction of Court under Section 27 is confined to only those properties which belong to wife and husband both. No more discussion on this issue is, therefore, necessary except what I have observed supra on facts. In my opinion, the learned trial Judge was right in his conclusion keeping in view the provisions of Section 27 while awarding return of part of properties.

10. Accordingly, I find no substance in appeal. It is dismissed. No cost.

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