

Kunju Moideen Vs. Sayed Mohammed

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Court : Kerala

Decided On : May-30-1985

Reported in : AIR1986Ker48

Judge : K.S. Paripoornan, J.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 2 and 3; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : S.A. No. 234 of 1980

Appellant : Kunju Moideen

Respondent : Sayed Mohammed

Advocate for Def. : T.R. Raman Pillai and; T.R. Ramachandran Nair, Adv.

Advocate for Pet/Ap. : P.K. Balasubramanyan and; G.K. Usha, Adv.

Disposition : Appeal allowed

Judgement :

K.S. Paripoornan, J.

1. The plaintiff in O.S. 208 of 1975 of the Munsiffs Court, Palai, is the appellant. Defendants 1 to 3 in the suit are the respondents. The plaintiff agreed to give his daughter in marriage to the second respondent. He intended to purchase an item

of his property in the name of his daughter and the 2nd respondent. A sum of Rs. 3001/- was paid to the 3rd defendant through the 1st defendant. The marriage did not take place. The respondents did not return the amount of Rs. 3001/-, which was obtained from the plaintiff. The suit was laid for the recovery of the said Rs. 3001/- with interest from 14-2-1975. Respondents denied receipt of the amount. It was also contended that the suit is not maintainable to recover the amount, since it was dowry coming within the purview of the Dowry Prohibition Act. The courts below concurrently found that respondents 1 and 2 received the amount. The trial Court decreed the suit. In appeal the learned Subordinate Judge, Kottayam, found that the plaintiff paid the sum of Rs. 3001/- to defendants 2 and 3 and the 1st defendant is not liable. Even so, the lower appellate Court held that the amount so paid satisfied the definition of dowry contained in the Dowry Prohibition Act. Relying on the decision reported in *Thomas v. Sarakutty*, 1975 Ker LT 386 it was held that the plaintiff cannot cover the amount. The plaintiff has come up in Second Appeal.

2. Questions A to G have been formulated in paragraph 14 of the appeal memorandum as substantial questions of law arising in the second appeal. They are as follows :--

'A) Whether an amount paid by a Mohammedan in connection with the marriage of his daughter to the prospective bridegroom for the purchase of a property in the joint names of his daughter and the would-be son-in-law, dowry as defined in the Dowry Prohibition Act 1961?

B) When an amount is paid to the prospective son-in-law for purchase of a property in the joint names of one's own daughter and the prospective son-in-law and the marriage does not take place, is not the father of the girl entitled in law to recover the amount so paid?

C) Where an amount is paid in connection with a proposed marriage but the marriage itself does not take place, can that amount be said to be 'dowry' within the meaning of the [Dowry Prohibition Act, 1961](#).

D) Is not a suit for recovery of a sum paid, even if it be dowry, maintainable when the proposed marriage in consideration of which it is paid, does not take place or is cancelled?

E) Do the provisions of the Dowry Prohibition Act 1961 bar a suit for recovery of Dowry paid?

F) Whether respondents 1 and 2 do not hold the amount as trustees liable to repay the same as such to the appellant in view of the trust having become incapable of being executed?

G) On the facts and in the circumstances of the case, is not the appellant entitled to the decree prayed for?

3. Counsel for the appellant, Mr. Balasubramonyam contended that on a fair reading of the plaint, it is evident that the plaintiff paid the amount for purchase of property in the name of his daughter and the 3rd defendant. It will not be dowry within the definition of Dowry Prohibition Act. In the alternative, it was contended that even assuming that the amount paid will satisfy the definition of dowry contained in the Act, the suit to recover the amount paid is not barred. The lower appellate Court was in error in holding so.

4. On a fair reading of the plaint, it is evident that the amount that was paid, was for purchase of property in the name of the plaintiff's daughter and the 3rd defendant. It cannot be said that the amount was paid or agreed to be paid at or before or after the marriage as consideration for the marriage of the parties. On that short ground the amounts sought to be recovered by the plaintiff is not dowry and it will not come within the inhibition of Dowry Prohibition Act. The learned Subordinate Judge was in error in holding that it will come within the definition of the Act and in non-suiting the plaintiff.

5. Even assuming that the amount paid will be 'dowry' within the definition of Dowry Prohibition Act, the further question is whether the suit for recovery of the sum is in any way barred. In *Abbas v. Kunhipattu*, 1975 Ker LT 604 : (AIR 1975 Ker 129), Viswanatha Iyer, J. posed the question and answered thus ;

'But, if in violation of those provisions dowry is given and received, the consequence is not that the transaction is invalid, the consequence is that provided for in the Act itself in Section 6.....'

The learned Judge held that the transaction does not become a void transaction. Later in a Division Bench decision *Mary v. Cherchi*, 1980 Ker 353 at p. 356 Viswanatha Iyer, J. speaking for the Bench held that the suit for recovering streedhanam amount will not be hit by the Dowry Prohibition Act. The observations aforesaid are clearly applicable in this case. There is a meaningful reason behind the aforesaid decisions. As observed by Krishna Iyer, J. in *K. Chellappan Pillai v. K. Kunju Pillai*, 1969 Ker LR 659 in another context :

'.....the scheme of the Act itself is to protect one class against another and it would be frustrating the purpose of the legislation if the protected class is prevented from claiming the refund from the class against which they are protected by the law.'

For these reasons, I am of opinion that the lower appellate Court was not justified in nonsuited the plaintiff. The judgment and decree of the lower appellate Court are reversed and that of the trial Court are restored. There shall be no order as to costs in this appeal.

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