

Aliyamma Vs. Thomas

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Court : Kerala

Decided On : Sep-01-2006

Reported in : AIR2007Ker23; 2006(4)KLT106

Judge : K.S. Radhakrishnan and; V. Ramkumar, JJ.

Acts : Cochin Christian Succession Act, 1097; [Dowry Prohibition Act, 1961](#)

Appeal No. : M.F.A. No. 752 of 1994

Appellant : Aliyamma

Respondent : Thomas

Advocate for Def. : Jacob Varghese and; M. Biju, Advs.

Advocate for Pet/Ap. : K.C. Charles, Adv.

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Can the wife claim any share in the family properties of the husband if the 'Sthridhanam' amount is utilised for the benefit of her husband's family is the question that has come up for consideration this case.

2. Parties are husband and wife. Marriage between them took place on 12-5-1952 and two sons were born in that wedlock. They were working as teachers and later they retired from service. After 35 years of married life they started living separate, wife alleging cruelty against husband and vice versa. In the year 1992 wife preferred O.S.137 of 1992 before the Munsiff Court, Ernakulam for partition against her husband claiming half share in the plaint schedule properties on the strength of Ext.A1 registered partition deed executed in the family of the husband. Suit was later transferred to the Family Court, Ernakulam. Question that is raised for our consideration is whether wife could claim share in a partition effected in the family of the husband.

3. Plaintiff has stated that at the time of her marriage, her father had entrusted with the defendant's father a sum of Rs. 2501/- and gold ornaments weighing 30 sovereigns by way of 'sthridhanam' and that the defendant's father had utilised that money and jewellery for benefit of his family. Partition was effected in the family of the husband. A1 is the registered partition deed. Provision was made in the deed acknowledging the fact that money was advanced by the plaintiff's father by way of 'sthridhanam' and the same was utilised for the benefit of husband's family. One additional share was accordingly allotted to the defendant acknowledging that fact. Plaintiff therefore claimed half share in the plaint schedule property. Further it was also stated that though plaintiff and the defendant are in joint possession, plaintiff is deprived of the income from the property. It is under such circumstance that the suit was filed for partition of half share in the suit properties which included the property gifted to the son also.

4. Suit was resisted by the defendant who however, admitted that at the time of his marriage his father had received Rs. 2501/- from the plaintiff's father. He denied the allegation that his father had taken away the plaintiff's jewellery, and that he had treated the plaintiff with cruelty and that he had deserted her. On the other hand, it is stated it was his wife and sons and wife's relatives had acted with cruelty towards him. Further it is also stated that although in the partition deed there is a recital acknowledging the receipt of the 'sthridhanam' amount and a provision has been made, the defendant was given only his due share. Further, it is also stated that the defendant had given 50 cents to the elder son of the plaintiff

with the knowledge of the plaintiff and that the suit property excluding the said 50 cents is in the possession of his brother George Kuru and the plaintiff is not entitled to get partition or separate possession of any share or to get any other relief in the suit.

5. Plaintiff got herself examined as PW1 and defendant got himself examined as DW1. A1 is the registered partition deed. The Court below after considering the oral and documentary evidence came to the conclusion that the plaintiff is not a sharer or co-owner of the plaint schedule properties and that her claim for half share in the suit property cannot be entertained. The Court concluded that she is not entitled to any share in the suit property and not entitled to any relief in the suit. Further, the court also noticed that plaintiff had not raised any claim for return of 'sthridhanam' even as an alternative relief. Holding so, the suit was dismissed. Aggrieved by the same this appeal has been preferred.

6. Counsel appearing for the appellant submitted that the additional share as per A1 registered partition deed should enure to the benefit of the plaintiff since the 'sthridhanam' amount received from the plaintiff's father was utilised for the benefit of the defendant's family. Further it is also pointed out that the intention of the plaintiff's father-in-law and members of the family was to give one share to the plaintiff acknowledging the receipt of 'sthridhanam' and the plaintiffs share of the property was entrusted to defendant in trust for the benefit of the plaintiff. Counsel placed reliance on a judgment of the Bombay High Court in Ramabai v. Raghunath : AIR1952 Bom106 and contended that a presumption has to be drawn that the defendant was keeping the property in trust for the plaintiff.

7. Counsel appearing for the respondent on the other hand, submitted that the Family Court has rightly dismissed the suit. Counsel submitted, at best the plaintiff can only raise a claim for return of 'sthridhanam' amount paid and she being not a member of the defendant's family she is not entitled to get any share in the family of the defendant. Counsel also submitted that plaintiff is not a co-owner along with defendant in the family properties of the defendant. She cannot claim any charge or lien over the father in law's property.

8. We have perused Ext. A1 registration copy of the partition deed of 1971 executed in the family of the defendant. Following portion extracted from A-1 is relevant for our purpose.

The above mentioned recital would indicate that defendant was given additional share because the amount by way of 'sthridhanam' received on his behalf was utilised for the benefit of the family. Question is whether, due to the mere fact that the amount received as 'sthridhanam' was utilised for the benefit of the husband's family, would it confer any right to the wife to claim share in the family properties of the husband. It is trite law that a Christian husband who receives 'sthridhanam' holds the amount in trust for his wife and he is liable to return the amount, if and when his wife demands it. A Division Bench of this Court while dealing with the provisions of the Christian Succession Act, 1097 and the [Dowry Prohibition Act, 1961](#) in Mary v. Cherchi and Ors. 1980 KLT 353 has held that it is unnecessary to dialate more into this aspect of the matter whether the amount is treated as Streedhanam within the meaning of the Cochin Christian Succession Act or 'dowry' within the meaning of the Dowry Prohibition Act. Both these enactments clearly state that the amount received by her husband, his parent or guardian shall be kept by him in trust for her. In other words, Streedhanam is always the property of the woman whoever is given custody of the same. Woman can always claim it back and enforce the return of it. A suit for recovering this amount will not be hit by the Dowry Prohibition Act.

9. We therefore hold that the mere fact that the 'sthridhanam' amount was utilised for the benefit of the husband's family would not confer any right on the wife to claim share in the family properties of the husband. At best she can only claim return of the amount paid to her husband by way of 'sthridhanam'. So far as this case is concerned it has been specifically stated in A1 registration copy of the partition deed executed in the family of the husband that the 'sthridhanam' has been utilised for the benefit of the family of the husband and that consequently additional share has been allotted to the defendant. At best the wife can have a charge or lien over the property which has been demarcated as additional share to the husband in his family partition. But that would not mean that she can be a sharer along with others in the family properties of her husband. We are therefore

of the view that the only remedy open to the wife is to file a suit for return of the 'sthridhanam' amount paid and she can claim a charge or lien over the properties allotted to her husband as per AI registration copy of the partition deed. We are therefore in agreement with the view expressed by the Family Court dismissing the suit filed by the wife. In the absence of any claim for return of the 'sthridhanam' amount no relief could be granted to the plaintiff.

M.F.A. therefore lacks merits and the same would stand dismissed.

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