

Majitha Beevi Vs. Yakoob

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Court : Kerala

Decided On : Mar-09-1999

Reported in : II(1999)DMC699; I(2000)DMC363

Judge : K.A. Mohamed Shafi, J.

Acts : Muslim Women (Protection of Rights on Divorce) Act, 1986 - Sections 3(1)

Appeal No. : Crl. R.P. No. 240 of 1993

Appellant : Majitha Beevi

Respondent : Yakoob

Advocate for Def. : M.V. Ibrahimkutty, Adv.

Advocate for Pet/Ap. : Pirappancode V. Sudheer, Adv.

Disposition : Revision dismissed

Judgement :

K.A. Mohamed Shafi, J.

1. The petitioner in M.C. No. 31/92 on the file of the Judicial First Class Magistrate's Court, Varkala is the revision petitioner. The order dated 30.12.1992 is under challenge.

2. The revision petitioner filed the M.C. before the lower Court claiming certain amounts under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 from her former husband, the respondent herein. The marriage between the petitioner and the respondent under Muslim Law on 22.6.1972, the birth of three children in that wedlock and the divorce of the petitioner by the respondent on 1.7.1991 are admitted. The petitioner claimed Rs. 1,500/- as maintenance during the period of iddat, Rs. 51/- as dower, Rs. 25,000/- being the value of the gold ornaments belonging to her and appropriated by the respondent, Rs. 1,50,000/- being the value of the property belonging to the petitioner and sold and appropriated by the respondent, and Rs. 1 lakh being reasonable and fair provision. Thus a total amount of Rs. 2,76,551/- is claimed by the petitioner from the respondent.

3. The respondent contended that the petitioner is not entitled to any of the claims made by her and he is not liable to pay any amount to the petitioner on any of the claims made in the petition.

4. The lower Court after trial found that the petitioner is entitled to Rs. 1,500/- as maintenance during the period of iddat at the rate of Rs. 500/- per mensem under Section 3(1)(a) of the Act, Rs. 51/- as unpaid dower under Section 3(1)(a) of the Act and disallowed the other claims made by the petitioner. Aggrieved by the order passed by the lower Court, the petitioner has preferred this revision petition before this Court.

5. Though in the revision petition the petitioner has contended that she is entitled to Rs. 1 lakh being reasonable and fair provision, Rs. 1,50,000/- being the value of her properties appropriated by the respondent by selling the properties, and Rs. 25,000/- being the value of 10 sovereigns of gold ornaments belonging to her and appropriated by the respondent, it is clear from the evidence on record and the finding arrived at by the lower Court in point No. 4 that the petitioner has not adduced any satisfactory evidence to prove that the respondent has appropriated that value of the two items of properties amounting to Rs. 1,50,000/- and Rs. 25,000/- being the value of 10 sovereigns of gold ornaments belonging to her and, therefore, the lower Court rightly found that the petitioner is not entitled to claim

those amounts from the respondent.

6. What remains for consideration is whether the claim made by the petitioner for Rs. 1 lakh as reasonable and fair provision under Section 3(1)(a) of the Act against the respondent is sustainable and whether the lower Court is justified in disallowing that claim made by the petitioner.

7. The respondent has contended that the revision petitioner had filed O.S. 18/92 before the Family Court, Thiruvananthapuram claiming maintenance from the respondent for himself and children and the Family Court after finding that the revision petitioner and the children are residing in the house belonging to the respondent and they are enjoying the properties belonging to the respondent held that they are not entitled to any maintenance from the respondent. A certified copy of the judgment passed by the Family Court, Thiruvananthapuram dated 30.1.1993 in O.S. 18/92 is produced alongwith Crl. M.P. No. 4399/98 in this Crl. R.P. According to the respondent the judgment passed by the Family Court in O.S. 18/ 92 is not challenged in appeal or revision and the same has become final. Therefore, according to the dismissal of O.S. 18/92 filed by the revision petitioner and the children claiming maintenance from the respondent by the Family Court after holding that the revision petitioner and the children are in possession and enjoyment of the house and properties belonging to the respondent, disentitles the revision petitioner from claiming any reasonable and fair provision from the respondent in this case. Though the judgment passed by the Family Court in O.S. 18/ 92 establishes that the revision petitioner has been in possession and enjoyment of the properties belonging to the respondent, that fact will not debar her from claiming reasonable and fair provision from the respondent which she is entitled to under Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act.

8. Section 3(1) of the Muslim Women (Protection of Rights on Divorce) Act reads as follows :

'3. Mahr or other properties of Muslim woman to be given to her at the time of divorce:

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to -

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair, provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.'

9. It is clear that under Section 3(1)(a) of the Act the divorced woman is entitled to reasonable and fair provision to be made and maintenance to be paid to her within a period of iddat from her former husband. It has to be noted that the provision of Section 3(1)(a) of the Act is enacted in tune with the Quranic mandate contained in verses 236 and 241 of Chapter II.

Verse 236 of Chapter II stipulates that:

'There is no blame on you if you divorce woman before consummation or. before fixation of the dower, but bestow upon them a suitable gift, the wealthy according to his means and the poor according to his means. A gift of a reasonable amount is due from those who wish to do the right things.'Verse 241 of Chapter II mandates that:'For divorced woman provision should be made on a reasonable scale and this is the duty on the righteous.'

10. This fact is evident from the statement of objects and reasons to the Muslim Women (Protection of Rights on Divorce) Act, 1986 which among other things states that a Muslim divorced woman shall be entitled to reasonable and fair

provision and maintenance within the period of iddat by her former husband. Therefore, the fact that the entitlement of a Muslim divorced woman to a reasonable and fair provision from her former husband be made during the period of iddat is beyond dispute.

11. In this case the contention of the respondent-former husband is that his earnings while working abroad were enjoyed by the revision petitioner - his former wife and he has purchased properties in the name of the revision petitioner while he was abroad. He has also contended that he lost his job as the revision petitioner prevented him from going abroad by taking his travel documents and therefore he has no job or income to pay anything to the revision petitioner. He also contended that the properties purchased by him utilising his funds in the name of the revision petitioner alone, in the joint names of the revision petitioner and himself and in his own name are in the possession of the revision petitioner and therefore as the revision petitioner is in possession and enjoyment of much more property belonging to him than what he would have been liable to pay as reasonable and fair provision to the revision petitioner, she is not entitled to claim nor he is liable to pay anything on that count. The lower Court found that the evidence on record established that by acquiring properties by the documents evidenced by Exts. DI to D7 in the name of the revision petitioner the respondent has made reasonable and fair provision for her future living and therefore she cannot claim any amount from him towards reasonable and fair provision.

12. Counsel for revision petitioner vehemently submitted that Clauses (a) and (d) of Sub-section (1) of Section 3 of the Act stand on entirely different footing. While Clause (a) of Section 3(1) stipulates that a divorced woman is entitled to reasonable and fair provision and maintenance to be made and paid to her within the period of iddat by her former husband, Clause (d) of that sub-section stipulates that she is entitled to all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends. Therefore, Counsel for revision petitioner vehemently argued that in view of Clause (d) of Sub-section (1) of Section 3 a divorced woman is entitled to all the properties given to her before or at the time or after her marriage by her relatives or friends or the husband or any relatives of the

husband or his friends. Hence he submitted that the properties acquired by the respondent in the name of the revision petitioner while they were living together as husband and wife cannot be reckoned while determining the reasonable and fair provision payable by the former husband to his divorced woman and the divorced woman is entitled to all the properties given by her former husband at the time of marriage or during the subsistence of marriage as well as reasonable and fair provision from him since Clauses (a) and (d) of Sub-section (1) of Section 3 clearly deal with different and distinct matters.

13. It is true that Clause (d) of Sub-section (1) of Section 3 of the Act provides that a divorced woman is entitled to all the properties given to her before or at the time of or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends. In the decision reported in *Abdul Sathar v. Arifa Beevi*, 1991 (1) KLT SN Case No. 22=I (1991) DMC 275, a Single Judge of this Court has held that a divorced woman is entitled to get back the Rolex watch gifted by her paternal uncle to her former husband since it is given as a consideration of his marriage with her and it is given in trust to him, the wife being the beneficiary.

14. In this case, it is admitted by the revision petitioner as P.W. 1 that while the respondent was working abroad he has purchased out of his own funds three items of properties in the name of the revision petitioner as evidenced by Exts. D4, D5 and D7 and two items of properties jointly in the names of the revision petitioner and the respondent as evidenced by Exts. D3 and D6. According to the revision petitioner as P.W. 1 the property acquired as per Ext. D4 is 9 cents of land, the property acquired as per Ext. D5 is 10 cents and the property acquired as per Ext. D7 is 27 cents of land. She also deposed that the property acquired as per Ext. D3 jointly is a paddy field measuring 45Vi cents and the property acquired as per Ext. D6 jointly is garden land of an extent of 30 cents. P.W.I has admitted that apart from the above properties the respondent has got 1.38 acres of land obtained as his family property wherein the respondent has constructed a house in which the revision petitioner and her children are staying. It is also deposed by P.W. 1 that she is in possession and enjoyment of the 1.38 acres of property belonging to the respondent and OS. 186/91 is filed by the respondent against the

revision petitioner before the Sub-Court, Attingal for eviction of the petitioner from that house and property, which was pending at the time of disposal of M.C. 31/92 by the lower Court. The revision petitioner has failed to adduce any evidence to establish that the respondent has got any other property apart from the aforesaid properties or any other source of income. Therefore, from the evidence available on record and as admitted by P.W. 1 it is clear that three items of properties measuring 27 cents, 9 cents and 10 cents respectively are standing exclusively in the name of the revision petitioner and she is entitled to half right of 45 1/2 cents of paddy field and 30 cents of garden land jointly with the respondent and the respondent has got exclusive right in 1.38 acres of land with house situated therein which is in the possession and enjoyment of the revision petitioner in respect of which a suit for recovery of possession filed by the respondent against the revision petitioner is pending before the Court.

15. From the aforesaid Quranic injunction and the provisions of Section 3(1) of the Muslim Women (Protection of Rights on Divorce) Act it is clear that the primary object of direction to the former husband to make fair and reasonable provision for the divorced woman is to provide for her maintenance after divorce. The quantum of provision has to be made by the former husband in accordance with his means and standard of living that is enjoyed by the divorced woman during the subsistence of the marriage. The mandate to make reasonable and fair provision is not in any way intended to harass the former husband or to enable the divorced woman to make any unlawful gain or unjust enrichment out of the divorce. It is a fair and equitable provision to be made by the former husband to his divorced wife. Even though reasonable and fair provision has to be made by the former husband to the divorced woman within the period of iddat yet if the husband has already made such reasonable and fair provision in favour of the divorced woman even during the subsistence of their marriage it certainly is a factor to be taken into account while considering whether the former husband is liable to pay any and what reasonable and fair provision to the divorced woman.

16. In this context the contention of the revision petitioner that in view of Section 3(1)(d) of the Muslim Women (Protection of Rights on Divorce) Act divorced woman is entitled to all the properties given to her before, at the time or after the

marriage by the husband or any relatives of the husband or his friends, the properties admittedly given by the respondent to the revision petitioner during the subsistence of her marriage will come within the ambit of Clause (d) of Sub-section (1) of Section 3 of the Act and as such those properties standing in the name of the revision petitioner cannot be taken into account while considering the eligibility of the revision petitioner for reasonable and fair provision from the respondent and, therefore, the lower Court is in absolute error in disallowing her claim for reasonable and fair provision under Clause (a) of Sub-section (1) of Section 3 of the Act is not sustainable. The properties referred to in Clause (d) of Section 3(1) of the Act cannot be construed as properties in its widest sense, as the revision petitioner wants in this case. The word 'property' occurring in Clause (d) of Section 3(1) should be considered in a strict and restricted sense than the wide amplitude given to the word in common parlance. If the word 'property' in Section 3(1)(d) of the Act is interpreted so widely as contended by the revision petitioner so as to embrace the vast properties or the entire properties acquired by the former husband in the name of his divorced wife during the subsistence of the marriage, it will jeopardise the very intentment of providing reasonable and fair provision by the former husband to his divorced wife. From the Quranic injunction and the provisions of Section 3(1) of the Act referred to above, it is patent that the idea behind the former husband providing reasonable and fair provision at the time of divorce to his divorced wife is to protect her from destitution and vagrancy due to the divorce. Therefore, by a reasonable, pragmatic and harmonious interpretation of the provisions of the Clauses (a) and (d) of Sub-section (1) of Section 3 of the Act, it is clear that Clause (d) deals with the properties given by the former husband to the divorced wife during the subsistence of the marriage by way of gift or otherwise. But Clause (d) of Sub-section (1) of Section 3 does not take in the entire or the major portion of the property acquired by the husband during the subsistence of the marriage in the name of his wife due to his own reasons for such acquisition without the intention to give the property to the wife as her exclusive property. In this case it is clear from the evidence of the respondent as R.W. 1 as well as the evidence of the revision petitioner herself as P.W. 1 that after the marriage while the respondent was abroad he has been sending his earnings to the revision petitioner and she has been meeting the expenses of the

family throughout and the properties were acquired in the individual name of the respondent and in the joint names of the revision petitioner and the respondent to be enjoyed by the family and not as a gift or separate property of the wife. Therefore, the properties acquired in the name of the revision petitioner exclusively and in the joint names of the revision petitioner and the respondent by utilising the funds of the respondent will not assume the character of property given by the husband before, at the time of or after the marriage to the revision petitioner so as to attract the provisions of Section 3(1)(d) of the Act as contended by the revision petitioner.

17. Considering the tradition of the Prophet when the wife of Thabit-ibn-Qais sought divorce from her husband in the Khul - a form, the Prophet asked her as to whether her husband had given any property to her. When she replied that he has given a garden to her, the Prophet asked her to return that property to her husband and obtain divorce. This instance from the tradition of the Prophet sets an example as to how the property of the husband in the hands of the wife should be treated at the time of divorce though it is not done directly while considering the factor for determining the reasonable and fair provision to be paid to the divorced wife by her former husband. Even though it is well settled that for payment of reasonable and fair provision the divorced woman need not be unable to maintain herself and even if she is in affluent circumstance, she is entitled to claim reasonable and fair provision from her former husband, the consideration being the means of the former husband and the standard of living of the divorced wife during the subsistence of the marriage.

18. In the decision in *Ahammed v. Aysha*, 1990 (1) KLT 172=11 (1990) DMC110, this Court has held that even millionaire wife who lives in luxury and affluence is certainly entitled to claim the reliefs provided under Section 3(1) of the Act from her former husband.

19. But all the above principles and factors will not come to the rescue of the revision petitioner in this case with regard to her claim for fair and reasonable provision from her former husband, the respondent herein. As it is proved that a good or major portion of the property acquired by the respondent with his own

funds is standing in the name of the revision petitioner exclusively and jointly with the respondent as her personal and individual property, the properties already given by the respondent to the revision petitioner will be in excess of the fair and reasonable provision that can be directed to be made by the respondent in this case in favour of me revision petitioner, especially considering the evidence of P.W. 1 that over and above the properties standing in her name and in the joint names of herself and the respondent, the only other property belonging to the respondent is 1.38 acres of house and garden now in the possession and enjoyment of the revision petitioner, in respect of which a suit for recovery of possession is filed by the respondent against her. Therefore, the lower-Court is perfectly justified in finding that in view of the fact that the revision petitioner is in possession of the properties belonging to the respondent as aforesaid, she is not entitled to claim any reasonable and fair provision from the respondent, and has to be upheld.

20. The respondent has vehemently contended that he has absolutely no means to pay any amount to the revision petitioner and on the other hand, the revision petitioner has got properties and means fetching large amount. This contention of the respondent is not sustainable. The scheme of the Act itself established that the primary concern is to protect the divorced woman from destitution and vagrancy and that primary responsibility is upon her former husband. In case the former husband is not in a position to make the payment, the liability is cast upon her relatives to maintain till her death as provided in Section 4(1) of the Act and in case the relatives mentioned in Section 4(1) of the Act are incapable to maintain the divorced woman, the liability is cast on the State Wakf Board to maintain her under Section 4(2) of the Act. But the primary liability of the husband to make the fair and reasonable provision as contemplated under Section 3(1)(a) of the Act will not be absolved so long as he has got the means to pay the same.

21. What follows from the foregoing discussions is that the liability of the former husband to make reasonable and fair provision in favour of his divorced wife within the period of iddat is absolute. The quantum of reasonable and fair provision has to be determined in accordance with the means of the former husband and the standard of living enjoyed by the divorced wife during the subsistence of the

marriage. The fact that the divorced wife has got means for her livelihood or that she is in affluent circumstances will not absolve her former husband from his liability to pay reasonable and fair provision to her. The prime object of directing the former husband to make reasonable and fair provision in favour of his divorced wife is to save the divorced wife from destitution and penury and it is not intended to harass or harm the former husband or to enable divorced wife to obtain any unlawful gain, undue advantage or unjust enrichment from her former husband on account of divorce. The liability cast upon the former husband is a just and equitable provision in line with the Quranic injunctions. Therefore, if the former husband has given or provided sufficient property to the divorced wife during the subsistence of the marriage satisfying the requirements of the reasonable and fair provision as provided under Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, the divorced woman is not entitled to claim reasonable and fair provision from her former husband over and above the properties already given to her by her former husband.

22. In this case, it is admitted by the revision petitioner as P.W. 1 and also proved by the documentary evidence adduced by the respondent that the respondent has acquired properties in the name of the revision petitioner by utilising his own funds much in excess of the reasonable and fair provision he is liable to make in favour of the revision petitioner at the time of divorce. The revision petitioner cannot claim the immovable properties acquired by the respondent in her name from out of his own funds as the property which she is entitled to under Clause (d) of Sub-section (1) of Section 3 of the Act. Under the circumstances the lower Court is perfectly justified in finding that the revision petitioner is not entitled to any amount by way of fair and reasonable provision under Section 3(1)(a) of the Act from the respondent and that finding has to be confirmed.

In view of my above findings this revision petition is devoid of any merit. Hence the order passed by the lower Court is confirmed and this revision petition is dismissed.