

Kamla Vs. Bhagirath

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Court : Rajasthan

Decided On : May-23-1996

Reported in : I(1997)DMC344; 1996(1)WLN411

Judge : V.S. Kokje, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 27

Appeal No. : S.B. Civil Misc. A. No. 187 of 1988

Appellant : Kamla

Respondent : Bhagirath

Advocate for Def. : Kulwant Singh, Adv.

Advocate for Pet/Ap. : B.N. Kalla, Adv.

Disposition : Appeal dismissed

Judgement :

V.S. Kokje, J.

1. The appellant, petitioner wife in the matrimonial case has been granted divorce on her prayer by the learned District Judge, Ganganagar but she is still dissatisfied by the Order under Section 27 of the [Hindu Marriage Act, 1955](#) (for short 'the Act' hereinafter), passed by the learned District Judge as regards the disposal of the

property of the couple while granting the decree of divorce. She has, therefore, preferred this appeal only on that point.

2. The appellant in her petition before the learned District Judge had pleaded in paragraph-7 that during the marriage ceremonies Rs. 5,100/- were paid to the respondent-husband at the time of 'Tika' ceremony, Rs. 11,000/- were paid to him at the time of marriage by putting them in a 'Thair', Rs. 2,787/- were spent in the ceremony of 'Odhavani' and utensils worth Rs. 2,000/- were given at the time of marriage. Rupees 9,315/- were spent on 'Tiwal' and 'Blanket', A Murphy radio worth Rs. 700/-, a sewing machine worth Rs. 550/-, a wrist watch worth Rs. 450/-, a gold ring worth Rs. 1,800/-, an Usha fan worth Rs. 550/-, a Wollen Suit worth Rs. 700/-, a Bicycle worth Rs. 550/- and miscellaneous furnishing items worth Rs. 2,200/- were also given to the respondent at the time of marriage. Besides expenses of conveyance at time of 'Tika' amounting to Rs. 2,000/- and expenses of transporting articles amounting to Rs. 200/- were also incurred by the petitioner's family. Rupees 7,000/- were stated to be spent on receiving and entertaining the 'Barat'. It was stated that the petitioner was driven out from her matrimonial home without returning the aforesaid articles and without reimbursing the aforesaid expenses. By a separate application under Section 27 of the Act, return of the aforesaid articles and refund of the amount was prayed for.

3. The respondent in his reply to the petition denied the allegations and stated that the claim was highly exaggerated. It was pleaded that only Rs. 500/- were paid at the time of 'Tika' and Rs. 200/- were paid for purchasing 'Blankets' at the time of 'Tika'. It was stated that at the time of marriage only 21 utensils, small and big in size, one Box, one Clock, one Radio and one cot was given to the respondent and nothing else was given. The 'Barat' consisted of 20 persons only and was entertained only once and therefore there was no question of spending Rs. 7,000/- on receiving and entertaining the 'Barat'. It was stated that the petitioner's family had no means to spend such a huge amount as claimed by them to be spent. In the special pleadings, it was also stated that respondent had presented ornaments of 8 totals of gold and 25 tolas of 'Chandi' which have been taken away by the petitioner.

4. The learned District Judge framed Issue No. 3 on the point and while finally disposing of the case issued a direction under Section 27 of the Act for the return of utensils, box and other things to the petitioner. The learned Judge took the view that under Section 27 of the Act, directions could be issued for the disposal of only such property which was given to the bride and the bridegroom as presents or gifts and which is the joint property of the husband and wife. He, therefore, declined to issue directions as regards the property which was exclusively given to one of the spouses at the time of marriage. Accordingly, he issued directions only about such articles which by their very nature were intended to be used by both the spouses and not one of them.

5. It is contended in this appeal on behalf of the appellant that such a narrow view could not be taken of the provisions of Section 27 of the Act and all the property which could come within the meaning of 'streedhan' could be directed to be disposed of by giving it to the wife under Section 27 of the Act.

Section 27 of the Act reads as under :

27. '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 wife.'

6. On the plain reading the Section empowers the Court to make provisions in the decree with respect to any property presented at or about the time of marriage only if such property belongs jointly to both the husband and wife. Two conditions have to be satisfied for a direction to be given under this Section viz. (i) the property should be presented at or about the time of the marriage and (ii) such property should belong jointly to both the husband and wife. If any authority is needed for the proposition, the learned District Judge has cited *Anil Kumar v. Smt. Jyoti*, 1987(1) WLN 421.

7. In the result, I am not in a position to accept the contention of the appellant that provisions regarding properties which are not joint properties of husband and wife but are separate properties gifted to them at the time of the marriage or thereabout

can be made under Section 27 of the Act. After all, the provision has been made in order to discourage multiplicity of suits so that the Court while deciding the matrimonial cases could also give directions as to the disposal of the joint properties of husband and wife presented to them at the time of the marriage or thereabout. In the Scheme of the Act, such a power can only be exercised within the narrow ambit provided by the Legislature and provisions can be made only about the properties about which there is no serious dispute between the spouses as to such properties being their joint properties and such properties having been presented at the time of the marriage or thereabout. Such a direction can be made only when either the essential facts are admitted or there is clear evidence on the record about the property belonging to both the husband and wife and it being presented at the time of marriage or thereabout.

8. The appeal is dismissed. There shall be no order as to costs.

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