

**Vasantha Vs. Chandran**

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**Court :** Chennai

**Decided On :** Nov-29-2002

**Reported in :** AIR2003Mad214

**Judge :** M. Karpagavinayagam, J.

**Appeal No. :** S.A. No. 820 of 2002 and C.M.P. Nos. 6571 and 6572 of 2002

**Appellant :** Vasantha

**Respondent :** Chandran

**Advocate for Def. :** A.K. Kumarasamy, Adv.

**Advocate for Pet/Ap. :** R.T. Duraisamy, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**M. Karpagavinayagam, J.**

1. Vasantha, the appellant/plaintiff filed the suit against her husband, Chandran, the respondent/defendant claiming maintenance at the rate of Rs. 2,750/- per month from the date of suit till her death, for the past maintenance at the rate of Rs. 74,250/-, for return of 13 sovereign jewels or its value at the rate of Rs. 39,000/-, for creating charge over the house property, namely, the suit property

and for permanent injunction restraining the defendant from alienating the suit property.

2. The trial Court decreed the suit, directing the defendant to pay Rs.1,500/- per month as maintenance from the date of suit, i.e. 1-7-1999 to the appellant and also directed the defendant to pay Rs. 39,000/- being the value of 13 sovereign jewels given as seedhana jewels for the marriage. The trial Court also created charge over the house property and granted permanent injunction restraining the defendant not to alienate the same. The trial Court dismissed the suit as against the claim for past maintenance. Aggrieved by the said findings of the trial Court, the defendant/husband filed an appeal before the lower appellate Court, which in turn allowed the appeal and dismissed the suit, holding that the wife deserted her husband. This judgment is the subject matter of challenge before this Court in this second appeal by the appellant/wife.

3. The case of the plaintiff is as follows:-

'(a) The marriage between the plaintiff and defendant was solemnized on 19-3-1995 and they were living together about one year. Since the defendant's mother told him that the period was not good to lead matrimonial life, the defendant took the appellant and left her in her parent's home. Subsequently, the defendant did not care to come and take her to the matrimonial home. Despite several request made by the parents of the appellant, the defendant was not inclined to take her back as she was black in colour.

(b) On 22-8-1998, the appellant gave a complaint to All Women Police Station, Erode regarding refusal of her husband to take the plaintiff back. On 31-8-1998, she has also sent a notice claiming maintenance. On 5-9-1998, the defendant sent a reply containing false assertions.

(c) Since the husband was earning about Rs. 10,000/- per month in the construction work and also owning a house property, the plaintiff would be entitled for maintenance at the rate of Rs. 2,500/- per month and also entitled for return of 13 sovereign jewels or its value worth about Rs. 39,000/- and also prayed for the other reliefs as stated above.'

4. The suit was contested by the defendant stating that the plaintiff and defendant were living together for one year and that he was compelled by the father of the appellant to stay in Karnataka where the father of the plaintiff was working. Though the defendant was living for some time in Karnataka at the instance of his father-in-law, he was insulted there and sent back home, and as such, the wife only deserted him. Consequently, the plaintiff would not be entitled to any relief sought for in the suit.

5. During the course of trial, the plaintiff examined herself as P.W.1 besides two other witnesses, namely, P.Ws. 2 and 3 and marked Exs.A-1 to A-8. The defendant examined himself as D.W.1 and marked Exs.B-1 to B-3.

6. Ultimately, decree was passed by the trial Court to the effect that the plaintiff would be entitled to monthly maintenance of Rs. 1,500/- from 1-7-1999, the date of suit and the defendant was directed to pay Rs. 39,000/- being the value of 13 sovereign jewels which was given as seedhana jewels at the time of marriage. A charge was also created on the suit property by the trial Court with a permanent injunction restraining the defendant from alienating the same. As far as the past maintenance claim is concerned, the suit was dismissed.

7. In the appeal filed by the defendant, the lower appellate Court came to the conclusion that since there is no proper reason for the wife to live separately, she would not be entitled to any of the reliefs sought for in the suit and the suit was dismissed.

8. On the following substantial questions of law, the matter was argued by learned counsel for the parties at length:-

(i) Whether the lower appellate Court is correct in dismissing the suit after having found that the marriage between the plaintiff and defendant is valid and the defendant did not take any step to take the plaintiff back to the matrimonial home?

(ii) Having admitted the marriage, is the defendant not liable to maintain his wife according to law?

(iii) Whether the lower appellate Court is correct in holding that there is no proof that the the defendant took 13 sovereign jewels from the plaintiff by disbelieving the evidence of P.W.2, who is a natural witness? And

(iv) Whether the lower appellate Court is correct in holding that the defendant, the only son has no share in the house of his father which was constructed with the contribution of the defendant also when he was 19 years old?'

8.A. I have carefully considered the submissions made by the learned counsel for the parties and gone through the records.

9. On a consideration of the materials available on record, on going through the judgments impugned, and in the light of the submissions made by learned counsel for the parties, I am of the view that the lower appellate Court did not advert to any of the reasonings given by the trial Court for passing decree in favour of the plaintiff. On the other hand, the lower appellate Court came to the conclusion that the defendant went to Karnataka to live with his wife, the appellant herein and since he was insulted there, he came back to his home and as such, the desertion is only on the part of the plaintiff, even without acceptable materials for the same. The findings given by the lower appellate Court is purely on surmises and conjectures.

10. There is no dispute in the fact that both the respondent/defendant and the appellant/plaintiff are the husband and wife respectively, and they were living together for one year. The fact that the wife gave a complaint to the Police since she was deserted from matrimonial home, has also not been seriously disputed. The fact of desertion has been mentioned in the notice sent by the plaintiff to defendant seeking maintenance. Thus, the fact remains that after one year, from the date on which she was left in her parental home, the defendant/husband did not take any effort to take her back to the matrimonial home. Though reply to the notice would show that the defendant has stated that he is prepared to take the plaintiff back, either before the notice or after the notice, and till the filing of the suit, the defendant had not taken any step for giving restitution of conjugal rights to his wife. Thus, the first substantial question of law is answered accordingly.

11. The trial Court has clearly discussed the evidence of P.W.1, the plaintiff, P.W.2-Periagopal who is related to the plaintiff and P.W.3, the father of the plaintiff. The trial Court has discussed the evidence of D.W.1, the defendant and gave reasonings for rejecting the case of the defendant.

12. I have gone through the evidence of P.Ws. 1 to 3 and D.W.1. The evidence of all these witnesses would clearly indicate that 13 sovereign jewels were handed over as seedhana jewels to the defendant at the time of marriage. As such, the third substantial question of law is answered accordingly.

13. Regarding fixation of maintenance amount, learned counsel for the appellant cited a decision of the Supreme Court rendered in KULBHUSHAN KUMAR VS . RAJ KUMARI AND ANOTHER : [1971]2SCR672 and contended that only particular percentage of income has to be fixed as maintenance. In the very same ruling, it is held that the amount payable by way of maintenance depends on the facts of each case and as such, no exception could be taken to the amount fixed by the trial Court as well as the date from which the maintenance could be claimed. In my view, the amount fixed by the trial Court, in the light of the quantum of the income that the defendant/husband derived, is correct and it cannot be said to be excessive.

14. Under those circumstances, the second substantial question of law with regard to entitlement of maintenance has to be answered in favour of the plaintiff. Accordingly, the same is answered in favour of the plaintiff.

15. But however, regarding the charge created on the property, it has to be stated that the house property was purchased by the father of the defendant. It is not disputed that the property is in the name of the defendant's father. The defendant would be entitled for the property only after the death of his father. It is stated that when the house was purchased by the father of the defendant, the defendant also had contributed much for the purchase and construction of the house. To prove these facts, there is no evidence let in by the plaintiff. Admittedly, at the time of construction of the house, the defendant was aged about only 15 or 16 years.

16. Under those circumstances, the plaintiff would not be entitled to the relief regarding the charge created on the house property by the Court below. The fourth question of law is answered accordingly.

17. For the foregoing reasonings, the second appeal is allowed. The lower appellate Court's judgment and decree are set aside. The judgment and decree of the trial Court are restored only insofar as (i) the relief of maintenance at the rate of Rs. 1,500/- per month from 1-7-1999, (ii) payment of value of 13 sovereign jewels, which is Rs. 39,000/- and (iii) disentitlement of the plaintiff for the past maintenance. The judgment and decree of the trial Court in respect of the relief of charge created for the house property which is in the name of the father of the defendant and the permanent injunction granted thereunder are set aside. No costs. Consequently, C.M.P. Nos. 6571 and 6572 of 2002 are closed.

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