

Surender Kumar Jain Vs. Jyoti and anr

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Court : Delhi

Decided On : Dec-24-2010

Judge : V.K. Jain, J.

Appeal No. : CS(OS) No.2115/2010

Appellant : Surender Kumar Jain

Respondent : Jyoti and anr

Advocate for Pet/Ap. : Mr. Harish Malhotra; Mr. S.B.Sharma, Advs.

Judgement :

1. This is a suit for recovery of Rs.30,70,000/-. It is alleged in the plaint that the plaintiff was having a live-in-relationship with defendant No.1 and they were residing on the first floor of House No.2841, 1 st Floor, Gali No.5, Regbarpura No.2, Gandhi Nagar, Delhi-110031, which the plaintiff had taken on rent. It is also alleged that the plaintiff invested in gold jewellery weighing about 1.5 kg. and kept the same with defendant No.1. Silver ornaments weighing about 1.0 kg. are also alleged to have been purchased by the plaintiff and kept with defendant No.1. The total value of the gold jewellery and silver ornament is stated to be about Rs.30 lakhs. It is also alleged that the plaintiff had kept Rs.70,000/- with defendant No.1 to meet any emergency.

2. It is alleged that since differences arose between the plaintiff and defendant No.1, the plaintiff stopped going to the premises where defendant No.1 was

residing though all household expenses were being incurred by him and the rent of the premises was also being paid by him.

3. According to the plaintiff on 9.9.2010 when he visited the aforesaid premises at House No.2841, 1st Floor, Gali No.5, Regbarpura No.2, Gandhi Nagar, Delhi, he found the premises locked and came to know from the neighbours that defendant No.1 had married a few days ago and had left with defendant No.2, taking all costly household articles with her. The plaintiff tried to contact defendant No.1 on her mobile, but she did not respond. The plaintiff has accordingly claimed a sum of Rs.30,70,000/- from the defendants being the value of the gold and silver jewellery and the cash which he had kept with her.

4. The defendants were proceeded ex-parte since they did not appear despite service of summons upon them. In his affidavit by way of evidence, the plaintiff has supported, on oath, the case set up in the plaint and has stated that defendant No.1 was living with him on the first floor of House No.2841, 1st Floor, Gali No.5, Regbarpura No.2, Gandhi Nagar, Delhi, which he had taken on rent from one Sardar Paramjeet Singh. Two children are also stated to have been born out of this relationship between the plaintiff and defendant No.1. He further stated that he purchased gold ornaments weighing about 1.5 kg. and silver ornaments weighing about 1.0 kg and kept them with defendant No.1, for safe custody, on account of the faith and trust which he had in her and with a clear understanding that the jewellery would be returned to him as and when required by him. According to him, the total cost of the jewellery articles is about Rs.30 lacs and Ex.PW-1/A to PW-1/H are various bills whereby these articles were purchased from two jewellers, namely, Goyal Jewellers and Shri Om Jewellers. He has also stated that since disputes arose between them, he stopped visiting the premises where defendant No.1 was living and that since February, 2008, he had been asking her to return the gold and silver jewellery which was kept with her for safe custody, but she has not returned the jewellery which he had kept with her. He has also claimed that in November, 2007, he had kept cash amounting to Rs.70,000/- with defendant No.1 in order to meet emergency. He further stated on 9.9.2010 when he went to the premises which he had taken on rent from Sardar Paramjeet Singh, he came to know from neighbours that defendant No.1 had married few days ago and had not

left any address, removing all the costly household and electronic items. He claimed that defendant No.1 had run away with defendant No.2 along with gold jewellery weighing 1.5 kg., silver ornaments weighing 1.0 kg. and also the cash of Rs.70,000/- which he had kept with her. Ex.PW-1/I to Ex.PW-1/Z-6 are stated to be the photographs of defendant No.1 wearing the gold jewellery on various occasions. Ex.PW-1/Z-7 is the complaint alleged to have been lodged by plaintiff against defendant No.1 at Police Station Gandhi Nagar. Ex.PW-1/Z-9 is the copy of the legal notice sent by the plaintiff to the Deputy Commissioner of Police through his counsel vide postal receipt Ex.PW-1/Z-10 whereas Ex.PW- 1/Z-11 is the legal notice sent by him to defendant No.1 on 27.9.2010 requiring her to return gold jewellery weighing 1.5 kg. and silver ornaments weighing 1.0 kg. or in the alternative pay an amount of Rs.30 lakhs to him. He also claimed return of the cash of Rs.70,000/- from defendant No.1.

5. I see no reason to disbelieve the unrebutted deposition of the plaintiff. The bills/invoices Ex.PW-1/A to PW-1/H show purchase of jewellery from time to time. The name of the plaintiff has also been recorded as the purchaser on these documents. The case of the plaintiff is that the jewellery which he had kept with defendant No.1 has been sold by her, in order to purchase the flat in which she is presently residing. Defendant No.1 had no right to sell the jewellery, which the plaintiff had kept with her for safe custody. In these circumstances, the plaintiff has become entitled to recover Rs 30 lakhs from defendant No.1 being the value of the jewellery which he had kept with her. He is also entitled to recover Rs. 70,000/- from defendant No.1 being the cash which he had kept with her for safe custody.

6. For the reasons given in the preceding paragraphs, a decree for Rs.30,70,000/- with costs and pendente lite and future interest at the rate of 6% is passed in favour of the plaintiff and against defendant No.1. No cause of action against defendant No 2 is made out since the jewellery is alleged to have been kept with defendant No.1 and is alleged to have been misappropriated by her. The same is the position with respect to the cash of Rs.70,000/- which he had kept with her. Hence, the suit against defendant No.2 is dismissed.

7. Decree sheet be prepared accordingly.

