



C.M.A. No. 735 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.06.2024

Pronounced on : 18.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A. No. 735 of 2022

Premlal Biju

... Appellant / Respondent

Vs.

Manoranjitham

... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the Judgment and Decretal order, dated 16.02.2021 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore allowing I.A. No. 84 of 2015 in H.M.O.P. No. 611 of 2014 and dismiss I.A. No. 84 of 2015 in H.M.O.P. No. 611 of 2014, on the file of the Additional Family Court, Coimbatore.

For Appellant : Mr. B.Hari Krishnan

For Respondent : Mr. N.Manokaran



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JUDGMENT

(Judgment of this Court was made by **P.DHANABAL,J.**)

This Civil Miscellaneous Appeal has been preferred as against the Fair and decreetal order dated 16.02.2021 passed in I.A. No. 84 of 2015 in H.M.O.P. No. 611 of 2014 on the file of the Additional Principal Family Court, Coimbatore, wherein the respondent herein has filed an application for return of articles and the same was allowed. Aggrieved by the said order, the present Civil Miscellaneous Appeal is filed.

2. The brief averments of the petition are as follows:-

The petitioner is the wife of the respondent and the marriage took place on 01.11.2004 at Palakkad, in accordance with the Hindu rites and ceremonies. At the time of marriage, parents of the petitioner gifted 50 sovereigns of gold ornaments, Rs. 50,000/- cash, Rs.10,000/- for purchase of motor cycle and Rs. 5,000/- for purchase of a coin box phone. The petitioner has filed the main petition for the relief of divorce. The jewels presented at the time of marriage are with the respondent and the family of the respondent pledged the said jewels for raising money for their money



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lending business. The petitioner has filed 16 items of ornaments which are under the custody of the respondent. Therefore, those articles have to be returned to the petitioner.

3. The case of the respondent is that he denied the claim of 50 sovereigns gold jewels gifted at the time of marriage. The petitioner, as per their community Ezhuya, used to register the gold ornaments presented at the time of marriage. The Secretary or President of M/s. Sri Narayana Dharma Parivarana Sangam would compulsorily register all the gold ornaments of the bride in a register maintained by them. The respondent does not have any gold ornaments of the petitioner. Hence, the petition is liable to be dismissed.

4. Before the Trial Court, the main H.M.O.P. No. 611 of 2014 and another H.M.O.P. 570 of 2017 filed by the respondent for restitution of conjugal rights along with the I.A. No. 84 of 2015 have been tried together. Before the Trial Court, on the side of the petitioner, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.19 were marked and on the side of the respondent, R.W.1 was examined and Ex.R.1 to Ex.R.7 were marked and



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also marked Ex.X.1. The Trial Court, after hearing both sides, allowed the petition filed by the petitioner by granting divorce and also by directing the respondent to return the articles mentioned in the petition. The petition filed by the respondent in H.M.O.P. No. 570 of 2017 for restitution of conjugal rights was dismissed. As against those orders, the respondent-husband had filed appeals in C.M.A. Nos. 735, 733, 741 and 735 of 2022. The C.M.A.s which arising out of the main original petitions that is C.M.A. Nos. 733 and 741 of 2022 were already disposed by this Court through order dated 29.03.2022 by dismissing those appeals. Now this Civil Miscellaneous Appeal in C.M.A. No. 735 of 2022 alone is pending for adjudication.

5. The learned counsel for the appellant would contend that the respondent herein has filed application before the Trial Court to return the ornaments mentioned in the list, but not produced any documents to prove that those ornaments were given to the appellant at the time of marriage. In fact, those ornaments were under the custody of the respondent and not under the custody of the appellant. But the Trial Court, without any evidence, erroneously allowed the application and directed the appellant to return those gold ornaments. In fact, the respondent is having Thaali Chain



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of 8 sovereigns and that also has to be returned to the appellant by the respondent. Without returning the same, the respondent filed application without any documents and no evidence to show that those ornaments were presented to the respondent at the time of marriage. The said ornaments were never under the custody of the appellant. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that the respondent was examined as R.W.1 and she categorically deposed about the purchase of the ornaments and the receipts were also marked as Ex.P.8 to Ex.P.18. Moreover, the appellant has not denied the presentation of the above said ornaments. Moreover, at the time of cross examination, he not even suggested that those ornaments are under the custody of the respondent. When the respondent made categorical allegations as against the appellant that he had the custody of the ornaments, he not even put a single question that the said ornaments are not under his custody. Moreover, the respondent at the time of evidence, categorically stated that the jewels were in the bureau available in the house of appellant and both the appellant and respondent have separate key for the bureau and the same was also



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admitted by the appellant. Therefore, the Trial Court, after considering the evidences of both sides, fairly came to conclusion and directed the appellant to return the said ornaments which are under his custody. Therefore, the order passed by the Trial Court is in order and the present C.M.A. is liable to be dismissed.

7. This Court heard both sides and perused the materials available on record.

8. The point for determination in the appeal is as follows:-

Whether the respondent / petitioner proved that the petition mentioned jewels are under the custody of the appellant?

9. For the sake of convenience and brevity, the parties are hereinafter will be referred to as per their status in the Trial Court.

10. The petitioner/wife filed H.M.O.P. No. 611 of 2014 for the relief of granting divorce. The petitioner/wife also filed an application in I.A. No. 84 of 2015 to return the jewels which are under the custody of the



respondent/husband. The said petition was tried along with main H.M.O.P. No. 611 of 2014 and the H.M.O.P. No. 570 of 2017 and in both sides, witnesses were examined and documents were marked. The petitioner/wife was examined as P.W.1 and she deposed about the purchase of jewels and the presenting of jewels at the time of marriage and the custody of the jewels. The respondent/husband was examined as R.W.1 and he has not specifically denied the custody of the ornaments. When the petitioner/wife specifically pleaded and gave evidence that the petition mentioned jewels are under the custody of the respondent/husband, he has not even put a single question in the cross examination by denying the custody of the jewels. Moreover, the petitioner/wife has produced the receipts and estimates for the purchase of the jewels and the respondent/husband, who is the appellant herein has not denied the custody of the list mentioned ornaments. Though the respondent/husband has pleaded that as per their community they used to record the jewels presented at the time of marriage and the register is under the custody of the M/s. Sri Narayana Dharma Parivarana Sangam, but he has not produced the said register to rebut the evidence of the petitioner/wife. When the petitioner/wife produced documents of the estimates and also deposed that the jewels were presented



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at the time of marriage and the same were under his custody, in order to rebut the said evidence, the respondent/husband who pleaded that it is the custom of their community to register the ornaments in the particular register has not produced the said register to substantiate his pleadings.

11. At the time of cross examination, the petitioner/wife admitted that the jewels were kept in the bureau and the petitioner as well as the respondent have separate keys for that bureau. Further, on the side of the petitioner, she produced Ex.P.5/complaint given by her before the Police where also she categorically stated that the husband had retained her 50 sovereigns of jewels and cash. But the respondent/husband claims that the wife had taken all her jewels with her. Further during the cross examination, the respondent/husband suggested the witness that his wife had left the matrimonial home after locking the almirah and taking the key, but not even suggested that she had taken all her jewels with her. The respondent/husband has not denied the presented jewels at the time of marriage and per contra, he pleaded that when the petitioner/wife left the matrimonial home, she had taken all jewels. But he had taken inconsistent plea that she locked the almirah with jewels and left the matrimonial home.



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12. Therefore, this Court comes to a conclusion that the jewels are under the custody of the respondent/husband and thereby, he has to return the ornaments to the petitioner/wife. The Trial Court also in this context, after elaborate discussions, correctly allowed the petition and directed the respondent/husband to return back the petition mentioned jewels. Therefore, there is no any perverse or infirmity found in the order of the Trial Court and it does not warrant interference. Thus, the point is answered.

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

(J.N.B., J.) (P.D.B., J)
18.07.2024

Index : Yes/No
Speaking Order : Yes/No
NCC : Yes/No

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To

The Additional Family Court, Coimbatore.



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J.NISHA BANU, J.
and
P.DHANABAL, J.

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Pre-delivery judgment in
C.M.A. No. 735 of 2022

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