

IN THE HIGH COURT OF KERALA AT ERNAKULAM

**PRESENT:
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

RSA.No. 838 of 2003 (G)

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AGAINST THE DECREE/JUDGMENT IN AS 69/2001 of SUB COURT,
THIRUVALLA DATED 07-02-2003**

**AGAINST THE DECREE/JUDGMENT IN OS 473/1996 of MUNSIFF COURT,
THIRUVALLA DATED 31-03-2001**

APPELLANT(S)/APPELLANTS/DEFENDANTS::

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- 1. GOPINATHAN NAIR, S/O.KUNJUNNI NAIR (DIED)
VADAKKEDATHU VEEDU, MITTAYIKKUNNAM,
KARAYIL, VADAYAR VILLAGE,
VAIKOM TALUK (LEGAL HEIRS ARE IN THE PARTY ARRAY).**
 - 2. CHANDRASEKHARAN NAIR,
VADAKKEDATHU VEEDU, MITTAYIKKUNNAM,
KARAYIL, VADAYAR VILLAGE,
VAIKOM TALUK.**
 - 3. KRISHNANKUTTY NAIR,
VADAKKEDATHU VEEDU, MITTAYIKKUNNAM,
KARAYIL, VADAYAR VILLAGE,
VAIKOM TALUK.**
 - 4. THANKAMMA,
VADAKKEDATHU VEEDU, MITTAYIKKUNNAM,
KARAYIL, VADAYAR VILLAGE,
VAIKOM TALUK.**

**BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR**

RESPONDENT/RESPONDENT/PLAINTIFF:

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VIJAYAMMA, W/O.GOPINATHAN NAIR,
CHANDRALAYAM, KALOOR MURI,
KALLOPPARA VILLAGE, MALLAPPALLY TALUK.**

R, BY ADV. SRI.A.X.VARGHESE

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 02-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ALEXANDER THOMAS, J.

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R.S.A.No. 838 of 2003

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Dated this the 2nd day of September, 2015

J U D G M E N T

The above captioned Regular Second Appeal arises out of the impugned judgment dated 7.2.2003 in A.S.No.69/2001 rendered by the learned Subordinate Judge, Thiruvalla, which has affirmed the impugned and judgment and decree rendered by the learned Munsiff in O.S.No.473/1996. The respondent herein/plaintiff filed the aforestated Original Suit, O.S.No.473/1996 before the Munsiff's Court, Thiruvalla for recovery of money in view of the following allegations:

2. That the marriage between the respondent herein and the 1st appellant/1st defendant was solemnized on 13.11.1994 at Thiru Erankavu Temple at Kavumbhagom as per the rites and ceremonies prevailing in their community and at the time of the marriage, an amount of Rs.50,000/- was given to the appellants/defendants in trust, as the due share of the respondent. That the respondent's father was not alive and therefore the marriage was conducted by the mother of the respondent. That

after the marriage the respondent, who started to live with the 1st appellant/ 1st defendant and the other defendants, was subjected to cruelty and therefore she was constrained to shift her residence with her mother. That since the 1st appellant did not care to provide for the needs and welfare of the respondent, she was constrained to file Maintenance Claim Petition as M.C.No.1 /1996 before the Judicial First Class Magistrate's Court, Thiruvalla and that she had requested the defendants several times to repay Rs.50,000/- given in trust and that the appellants/ defendants did not pay the amount to the respondent and therefore she has filed the aforesaid suit for realisation of the said amount.

3. The defendants/appellants filed their written statement with a counter claim, wherein it is inter alia pointed out that it was the uncle of defendants 1 and 2, who negotiated the marriage that had taken place and that it was under his leadership and initiative that the marriage proposal was worked out and that the allegation that the sum of Rs. 50,000/- was given as her share is false. That the 2nd defendant in the suit (who is the mother of the 1st defendant) is aged and was suffering from old age ailments and therefore it was the uncle of the 1st defendant, who was responsible for the

conduct of the marriage. That an amount of Rs. 25,000/- was actually handed over to the uncle of the 1st appellant/1st defendant on the date of betrothal and that the uncle spent the entire amount in connection with the conduct of the huge expenses involved in the marriage ceremony. That at the time of the marriage, the appellant/1st defendant had given a gold thali chain and locket weighing 48 grams and that the appellants spent an amount of Rs. 21,761/- for the same and that the 1st appellant is entitled to recover the same from the respondent. That the respondent was not treated with any cruelty and that she left the matrimonial home on her own volition as her sister and brother took her from the defendants' house on 25.11.1995. The the respondent is not entitled to recover the amount of Rs.50,000/- from the appellants/defendants and that at the same time, the 1st appellant is entitled to recover the gold chain and locket or an amount equal to the value of the same, from the respondent. It is also pointed out that the uncle of the 1st defendant is a necessary party in the suit and that the suit is bad for non-joinder of that necessary party. The 1st appellant claimed a sum of Rs.23,000/- from the respondent by way of aforesaid counter claim. The defendants have prayed for

dismissal of the suit and a decree in terms of the counter claim.

The respondent filed the replication denying the contentions in the written statement and also contended that no amount was paid to the uncle of the 1st defendant as contended in the written statement and the counter claim. The respondent also denied that the 1st appellant has entrusted a gold locket weighing 20 gms. and that the appellant has only given a minnu chain and that there was no understanding that the said chain is to be returned and that counter claim is not maintainable.

4. In view of the rival pleadings, the trial court had raised the following issues for consideration:

- “1. Whether the plaintiff is entitled to recover any amount from the defendant as prayed for ?
2. Whether the defendants are entitled for recovery of the amount from the plaintiff as prayed for a in the counter claim ? If so, what is the quantum ?
3. Reliefs and costs ?”

5. The trial court after a meticulous appreciation of evidence held that in view of the clear cut admission by the defendants that the 1st defendant's uncle had received an amount of Rs.25,000/- in connection with the marriage expenses and the partial admission coupled with the oral testimony of PW-1 would be

sufficient to infer that an amount of Rs.50,000/- was actually given to the 1st defendant at the time of the marriage between the respondent and the 1st defendant. The trial court held that on an analysis of the oral testimony of PWs 1 to 3 that though they were cross-examined at length, their testimony as to the giving Rs. 50,000/- to the 1st defendant remains unshaken. Therefore, the trial court held that the oral evidence can be based for a finding especially when the factum of giving Rs.50,000/- remains unshaken in the cross examination. In this view of the matter, the court below held that the plaintiff has proved her case and that she is entitled to recover an amount of Rs.50,000/- from the defendants.

6. As regards the counter claim, the trial court held that Ext.B-1 is the evidence available for coming to a clear finding that Rs. 21,761/- was actually spent by the defendants for the purchase of thalichain and the gold locket. Though the plaintiff has disputed in her deposition and the written statement to the counter claim with regard to the quantity of the gold remaining with the plaintiff, the court below held that it is proved by Ext.B-1 document that the gold worth Rs.21,761/- was actually purchased by the 1st defendant prior to the marriage with the plaintiff, which was handed over to

the plaintiff. Therefore, the court below held that it is only safe to infer that the gold covered by Ext.B-1 is in the possession of the plaintiff. The court below held that the plea of the plaintiff that there was no agreement to return the gold ornament is unsustainable especially because the plaintiff is now demanding the return of Rs.50,000/- and therefore she is bound to return the gold given by the 1st defendant at the time of the marriage as covered by Ext.B-1 document. In the counter claim an amount of Rs. 23,000/- was claimed in lieu of 48 gms. of gold. But the court below held that since Ext.B-1 document clearly shows only an amount of Rs. 21,761/- was actually spent by the 1st defendant for purchasing the said gold article, the counter claim can be allowed only to the extent covered by Ext.B-1 document or the gold covered under Ext.B-1 document. In this view of the matter, the trial court decreed the suit allowing the plaintiff to recover the amount of Rs. 50,000/- from the defendants and their assets and the counter claim of the 1st defendant was allowed to the extent of Rs.21,761/- or to the extent of the gold covered under Ext.B-1 receipt and that Ext.B-1 will form part of the decree.

7. These conclusive findings of the trial court have been

confirmed by the lower appellate court in the impugned judgment dated 7.2.2003 in Appeal Suit, A.S.No.69/2001 rendered by the learned Subordinate Judge, Thiruvalla.

8. On a perusal of the materials on record and the evidence adduced in this case, this Court is also of the considered opinion that the concurrent findings made by the both the courts below that though PWs. 1 to 3 were cross examined at length, the testimony as to the giving of Rs.50,000/- on behalf of the plaintiff to the 1st defendant remains unshaken. It is also to be borne in mind that in a case like this relating to arrangements in the conduct of a marriage, the possibility of getting documentary evidence is rather remote and the case will have to be decided mainly on the basis of the oral testimony adduced on behalf of the parties concerned. There is nothing in the cross examination, which has in any way, seriously made an attempt to attack the consistent version given by PWs 1 to 3 in their evidence that Rs. 50,000/- was actually handed over by the plaintiff in trust to the defendants at the time of the marriage as her share in the family property, etc.

9. This Regular Second Appeal was admitted by this Court on the following question of law:

“Is not the finding of the courts below that the amount of Rs.25,000/- received by the uncle of the appellants amounted admission of the plaint amount by the defendants contrary to the pleadings and evidence on record ?”

10. On an anxious consideration of the evidence adduced in this case, this Court is of the considered opinion that the aforestated question of law does actually arise for consideration in the facts and circumstances of this case. True that the defendants have set up a case that 1st defendant's uncle has only received an amount of Rs. 25,000/- at the time of the marriage. This by itself is not in any way intrinsically incompactble with the case set up by the plaintiff that an amount of Rs.50,000/- was paid in trust on her behalf to the defendants at the time of the marriage. Both the courts below on meticulous appreciation of the evidence on record have come to the conclusion that the consistent oral testimonies of PWs 1 to 3 that total amount of Rs.50,000/- was actually handed over to the defendants at the time of the marriage is not in a way contradicted or shaken in evidence. Therefore, it is only to be held that the admission of having received an amount of Rs. 25,000/- by the uncle of the 1st defendant does not lead to any contradiction in the main case of the plaintiff that they have actually paid an amount of Rs.50,000/- to the defendants at the time of marriage. This

Court while admitting this Regular Second Appeal had issued order dated 19.9.2003 on I.A.No.867/2003 in R.S.A.No.838/2003 that there will be interim stay on condition that the petitioners shall pay an amount of Rs. 25,000/- to the respondent within two months from the date of the order.

11. The learned counsel for the appearing for the appellants are not able to say with precision as to whether the said amount of Rs.25,000/- has actually been paid by the appellants to the respondent as directed by this Court in the interim order 19.9.2003. Since the trial court has decreed the suit allowing the plaintiff to recover and realise an amount of Rs.50,000/- and has also allowed the counter claim of the 1st defendant to the extent of Rs. 21,761/- or to the extent of the gold covered under Ext.B-1 receipt, the impugned decree is modified to the limited extent that the suit is decreed allowing the plaintiff to recover and realise an amount of Rs. 28,239/- (viz., Rs.50,000 – Rs. 21,761) from the defendants and their assets. It is made clear that in case the appellants have already paid the amount of Rs. 25,000/- in compliance with the interim stay order dated 19.9.2003 passed by this Court in this Regular Second Appeal, then the resultant deduction may also be given in that

regard, subject to proof of any such payment. With this slight modification in the impugned decree, the Regular Second Appeal stands dismissed.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge