

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 148 of 2016

(Arising out of judgment/order dated 28.04.2016 passed in Misc. Civil Suit No.08/2015 of the learned Family Court, Mahasamund)

- Smt. Babita @ Gyatri, W/o Modprasad @ Pintu Patel, Aged About 29 Years, Caste Aghariya, R/o Village Tilakpur, Tahsil Pithora, District Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. Modprasad @ Pintu, S/o Kheersai Patel, Aged About 32 Years
2. Kheersai Patel, S/o Sakharam Patel, Aged About 55 Years,
3. Smt. Gajmoti Patel, W/o Kheersai Patel, Aged About 50 Years

All are caste Aghariya, R/o Village Kumhari, Post Singhanpur, Tahsil Basna, District Mahasamund, Chhattisgarh

---- Respondents

For Appellant
For Respondents

Shri R. S. Patel, Advocate
Shri Prasoon Agrawal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board

12/09/2017

1. The short question arising for determination in this appeal is whether an independent proceeding for return of *Streedhan* under Section 27 of the Hindu Marriage Act, 1955 (henceforth 'the Act, 1955') is maintainable when no other matrimonial proceeding between the parties has ever been decided or pending.

2. As projected in the petition under Section 27 of the Act, 1955 preferred by the appellant, the parties were married on 09.05.2011, however, on account of dispute between the couple, the appellant lodged an FIR for offence under Section 498-A IPC against the husband and his relatives as also a separate proceeding under Section 125 CrPC for grant of maintenance. There is no pleading that any proceeding under the Act, 1955 has ever been initiated by any of the parties.
3. The Family Court has dismissed the appellant's application as not maintainable on the reasoning that an independent proceeding under Section 27 of the Act, 1955 would not lie.
4. Shri R. S. Patel, learned counsel for the appellant would submit that even if no matrimonial proceeding is decided or pending, the Family Court would still have jurisdiction to decide the question of return of *Streedhan* on merits and nothing prohibits the Family Court to exercise such jurisdiction.
5. Per contra, Shri Prasoon Agawal, learned counsel for the respondents would support the impugned order.
6. Before proceeding to dwell on the issue, it would be apt to refer to the provisions contained in Section 27 of the Act, 1955, it reads thus:-

“27. **Disposal of property.** 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 the wife.”

7. The expression used in the above quoted provision contained in Section 27 of the Act, 1955 would explicit, on a bare reading, that the Court may make 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 the wife. When any matrimonial proceeding under the Act is not decided between the parties, the provision does not clothe the Court with jurisdiction to entertain an independent application under Section 27 of the Act without there being any further proceeding under the Act as contemplated in Section 9 to 13 and 13-A and 13-B of the Act, 1955. The provision has been made with an intent to avoid multiplicity of litigation and to entitle the wife to move application for return of *Streedhan* properties in the same proceedings, in which a matrimonial dispute has been brought to the Court for adjudication. However, Section 27 itself has not been considered to be a separate and independent matrimonial proceeding so as to entitle the Court to entertain such independent application under Section 27 of the Act, 1955.
8. If the authorities are to be found for the above proposition, we may refer to the judgment rendered by the Supreme Court in the matter of **Balkrishna Ramchandra Kadam vs Sangeeta Balkrishna Kadam**, reported in AIR 1997 SC 3562, which says that Section 27 provides an alternative remedy to the wife so that she can recover the property, which is covered by the Section, by including it in the decree in the matrimonial proceeding, without having to take recourse to the filing of a separate civil suit and avoid further litigation.

9. In FAM No.5/2008 (**Sanjay Kumar Manu vs Shrimati Urmila Manu**), decided on 13.07.2010 by one of us (Prashant Kumar Mishra), a similar view as has been taken that an independent proceeding under Section 27 of the Act, 1955 has not been contemplated from the language contained in Section 27 of the Act, 1955. It is held thus in paragraph 11:-

(11) On the basis of what has been observed by the Hon'ble Supreme Court and the Single Bench of Punjab & Haryana High Court it would appear that an independent proceeding under Section 27 of the Act has not been contemplated from the language contained in Section 27. For application of the provision of Section 27 first there has to be a proceeding which can be said to be main proceeding under the Act 1955 and while passing a decree in the said main petition, Court is empowered to make provision in the decree as it deems proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and wife. In the present case the respondent/wife has not instituted any petition seeking decree of divorce or judicial separation or restitution of conjugal rights and has straightway preferred an application under Section 27 for return of 'Stridhan' property on the allegation that the property were presented at the time of marriage. Taking guidance from judgment rendered by Hon'ble Supreme Court **Balkrishna Ramchandra Kadam Vs. Sangeeta Balkrishna Kadam** (supra), and in the Punjab & Haryana High Court **Smt. Surinder Kaur Vs. Madan Gopal Singh** (supra), this Court is of the opinion that an independent proceeding under Section 27 without there being any main petition pending under any other provision of the Act 1955, is not maintainable.

10. A Division Bench of Madhya Pradesh High Court in the matter of **Manish Nema vs Sandhya Nema**, reported in 2009 (2) MPHT 267, has held that relief under Section 27 of the Act seeking Court's direction for return of *Streedhan* can be obtained even in a subsequently instituted proceeding, after disposal of the matrimonial proceeding. This judgment has been pressed into

service by the learned counsel for the appellant to canvass that an independent proceeding under the Act is maintainable. However, on a complete reading of the judgment, we find that decision is in sink with the law laid down by the Supreme Court in **Balkrishna Ramchandra Kadam** (supra), inasmuch as a subsequent application under Section 27 of the Act for return of *Streedhan* would be maintainable after a previously instituted matrimonial proceeding has been decided between the parties. However, the judgment nowhere lays down the proposition that a proceeding commenced for the first time between the parties in form of application under Section 27 is maintainable even in a case where no other matrimonial proceeding has ever been initiated, decided or pending between the parties.

11. In view of the above discussion, we are not persuaded to hold that the impugned judgment suffers from any legal infirmity. The appeal has no substance, it deserves to be and is hereby dismissed. However, liberty is reserved in favour of the appellant to move appropriate application under Section 27 of the Act, 1955 or under any law in force for return of *Streedhan* property.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel