

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-09-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.PD.No.981 OF 2017

M.Ezhilan

...

Petitioner

-VS-

N.Vinutha

...

Respondent

Petition under Article 227 of the Constitution of India against the order, dated 28.09.2016, passed in I.A.No.2187 of 2014 in O.P.No.3448 of 2010 on the file of II Additional Family Court, Chennai.

For petitioner : Mr.M.Vivekanandan

For respondent : Mr.V.K.Sathiamurthy

सत्यमेव जयते

ORDER

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This Civil Revision Petition is directed against the order of the Court below, ordering return of the articles by the petitioner/husband to the respondent/wife.

2. Petitioner has filed O.P.No.366 of 2005 for declaring the marriage which took place between him and the respondent, as null and void. In the said petition, he

has averred, among other things, that at the time of marriage, the parents of the respondent gave 70 sovereigns of gold jewellery, silver vessels worth Rs.50,000/-, and, in turn, he has gifted Thali Chain and Mangala Sutra along with a set of 25 sovereigns of jewellery.

3. Responent/wife has filed H.M.O.P.No.3448 of 2010 for restitution of conjugal rights. In the said petition, I.A.No.2187 of 2014 has been filed on 21.05.2014, seeking for return of the articles, wherein, she has stated that entrustment of the jewels coupled with silver articles and also Hyundai Accent Car bearing Registration No.TN23Z3996 was given to the respondent therein at the time of marriage. She has also listed the items of jewellery and silver articles and sought for return of the same from the custody of the husband. Petitioner/husband, who is the respondent in the above interim application, has filed a counter affidavit therein, setting out all the details of the marriage and history of the case. He has, inter alia, stated that he was totally unaware of the gold jewellery and silver articles given to the petitioner by her parents, as the petitioner/wife, within a period of two months of matrimonial life, locked his mother in the matrimonial house and joined with her first husband one Mr.Jayakumar at Bangalore. At that point of time, he had no knowledge of the marriage of the petitioner with the first husband, and he lodged a complaint with Anna Nagar Police Station, pursuant to which, a woman missing case and also an FIR were filed. After investigation by the police, he came to know of the first marriage between Jayakumar

and the petitioner. Other than this, there is no averment in the counter as to the possession of jewellery with the wife.

4. The contention of the learned counsel for the petitioner herein is that there is no whisper in the counter affidavit filed by the respondent/wife as to the entrustment and custody of articles with the petitioner. He would submit that the petitioner mainly focussed on conducting of O.P. and he was unaware of the developments and he did not also anticipate of such a petition being filed for return of articles. The learned counsel would vehemently contend that the respondent/wife has taken away certain documents and used them as evidence in other cases filed by her at Bangalore. Accordingly, he insisted this Court to presume, that along with those certificates, the respondent might have taken away gold jewellery and silver articles also with her.

5. There is no specific pleading as to the denial of entrustment of articles or any statement that the jewels were taken away by the wife. In the absence of any specific pleading that the jewels were taken away by the wife or that the silver articles were given back to the wife on an earlier occasion, the pleading of ignorance by the petitioner/husband will not be of any avail to him. A blunt refusal by the petitioner as to the articles has been observed by the trial Court.

6. The trial Court, after considering the submissions made by the parties and also the materials placed before it, has accepted the submissions made by the

respondent/wife and, accordingly, rendered a finding that the petitioner/husband is bound to return all the articles and the car stated in the petition and affidavit to the respondent/wife.

7. Attention of this Court is also drawn to the O.P. filed by the petitioner for divorce, wherein, there is a categorical statement as to the entrustment by the husband himself and, no where, in the pleading, it is denied. Therefore, in the absence of any statement disproving the entrustment or that the custody of the articles is not with the petitioner, it should be presumed that the articles are still with the petitioner.

8. Learned counsel for the respondent has relied on a judgment of the Hon'ble Supreme Court in *Pratibha Rani v. Suraj Kumar and another*, AIR 1985 SC 628 (1), wherein, it has been held as under :

"It cannot be said that upon a woman entering the matrimonial home, the ownership of stridhan property becomes joint with her husband or his relations. Even if the stridhan property of a married woman is placed in the custody of her husband or in-laws, they would be deemed to be trustees and bound to return the same if and when demanded by her."

9. Learned counsel for the respondent has also relied upon a judgment of the Madhya Pradesh High Court in *Surendra Dixit v. Smt.Seema Dixit*, reported in 1997 (1) M.P.L.J.78, wherein, it has been held that ornaments given to the wife by her father

may be in the shape of dowry, but, the same constitutes the stridhan and husband holds the stridhan as a trustee. He is, therefore, not only liable to return stridhan to the wife, but, in the case of his failure, he is also liable for criminal prosecution for breach of trust.

10. In view of the above settled legal propositions and also for the reasons stated above, this Court is of the considered opinion that there was true entrustment of articles with the petitioner/husband and hence he is bound to return the same. As such, the order passed by the trial Court, which is impugned in this petition, is very much correct and legal and no interference is warranted therewith.

11. Civil Revision Petition is dismissed. No costs. Consequently, the connected C.M.P.No.4853 of 2017 is closed.

Index : Yes/No
Internet : Yes/No
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06-09-2017

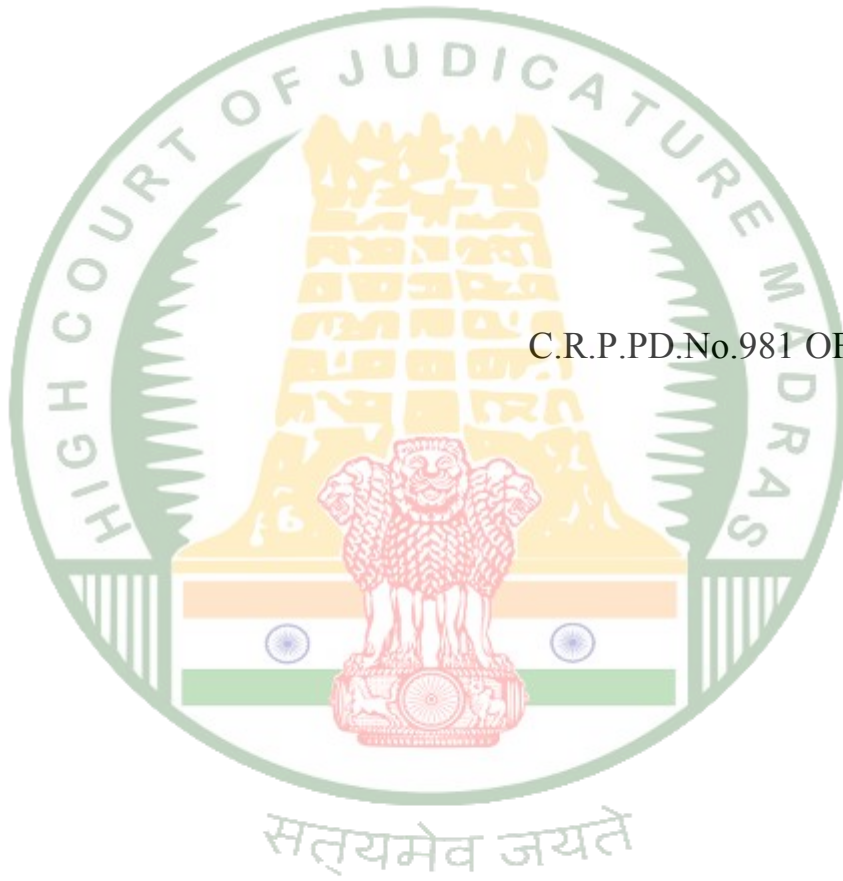
Note to Office :
Issue Order Copy on or before 13.09.2017.

To

II Additional Family Court,
Chennai.

M.GOVINDARAJ,J.

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