

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE SMT. JUSTICE T.RAJANI

FAMILY COURT APPEAL No.139 of 2017

10.04.2017

Between:

Smt.Ayesha Sultana

..Appellant

And

S.K.Ahmed and others

..Respondents

Counsel for the appellant: Mr.Ali Farooq

Counsel for respondent No.1:Mr.K.Krishna

Counsel for respondent Nos.2 and 3: --

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Respondent No.2 in F.C.O.P.No.227 of 2009 on the file of the Judge Family Court, Hyderabad, filed this Family Court Appeal feeling aggrieved by order and decree, dated 30.12.2016, in the said F.C.O.P.

2. The marriage between the appellant and respondent No.1 having ran into rough weather, they have got legally separated in the year 2001. During the subsistence of their marriage, which took place in the year 1992, certain jewellery, which are the subject matter of the F.C.O.P., were procured by the family. Respondent No.1 filed the aforementioned F.C.O.P. for a direction to respondent No.2 bank to allow him to use and operate locker No.420, without reference to the appellant. It is the pleaded case of respondent No.1 that he procured the jewellery after his daughter i.e., respondent No.3 was born and that as at that time, he was living in U.S.A. in connection with his career, the appellant, who was under his care, was made to open the bank account and also secure a locker for preserving the jewellery purchased by him. It is his further plea that after he returned from U.S.A., the locker was made joint in February, 1998 and that he alone has exclusive right over the jewellery.

3. The appellant filed written statement in the F.C.O.P. denying the claim of respondent No.1 over the jewellery. She pleaded that at the time of marriage, her parents gifted the jewellery and the same were preserved in respondent No.2 bank locker secured in her name. She further pleaded that merely because the name of respondent No.1 was added making the locker a joint one, it cannot be construed as respondent No.1 having any right over the jewellery therein.

4. Having regard to the rival contentions of the parties, the Family Court framed the following issues:

(i) Whether the petitioner (respondent No.1 herein) is entitled to the relief of mandatory injunction as prayed for?

(ii) Whether respondent No.2 (appellant herein) is entitled for the relief of declaration as prayed for?

(iii) Whether respondent No.2 (appellant herein) is entitled for the relief of mandatory injunction as prayed for?

(iv) To what relief?

In support of his case, respondent No.1 examined himself as P.W.1 and got Exs.P-1, P-2 and A-3 to A-18 marked. The appellant examined herself as R.W.2 and also examined R.Ws.1, 2 and 4. Exs.R-1 to R-5 were marked on her side. On appreciation of the oral and documentary evidence, the Family Court has held all the issues in favour of respondent No.1 and against the appellant, by the order under appeal. Feeling aggrieved by this order, this appeal is filed by respondent No.2 in the F.C.O.P.

5. Mr.Ali Farooq, learned counsel for the appellant, has vehemently submitted that the jewellery belongs to his client as at the time of marriage, her husband – respondent No.1 gifted the same to her. He has further submitted that among Exs.A-3 to A-16 bills, some stand in the name of the appellant and therefore, the Family Court has committed a serious error in holding that the entire jewellery belongs to respondent No.1. He has placed heavy reliance on Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short 'the Act') and submitted that all the properties given to the bride before or at the time of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband or his friends shall belong to the woman only.

6. Mr.K.Krishna, learned counsel for respondent No.1, has seriously opposed the above submissions and has submitted that no iota of

evidence was produced by the appellant in support of her plea that the subject jewellery belongs to her.

7. As regards the first submission of the learned counsel for the appellant, the same runs contrary to the specific plea of the appellant. In para 4 of the written statement filed by her in the F.C.O.P., the appellant specifically pleaded that she used to keep the jewellery given by her parents in the locker and that she alone used to operate the said locker. Thus, it is the pleaded case of the appellant that her parents have presented the jewellery at the time of her marriage. The learned counsel for the appellant has relied upon the cross examination of R.W.4 – the father-in-law of the appellant. A reading of his cross examination shows that he categorically denied the suggestion that the father of the appellant presented the jewellery to her daughter at the time of her marriage. In deed, in his chief examination, R.W.4 categorically stated that his son – respondent No.1 purchased several gold ornaments on different occasions for respondent No.3. Even in his cross examination, this witness stated that the jewellery shown in Ex.P-8 (a to e) worn by his granddaughter are big in size to be worn by elder person and not that of her small size and that the jewellery was purchased keeping in mind that his granddaughter could use the same at the time of her marriage. As rightly pointed out by the Family Court, when divorce was granted in the year 2001, the appellant has not made any claim for the jewellery. Similarly, even thereafter also she has not made any independent claim for the jewellery. It is only when respondent No.1 filed the aforementioned F.C.O.P., that for the first time the appellant has made a claim for the jewellery. If the jewellery belonged to the appellant, she would not have failed to make a claim for the same at the time of divorce with respondent No.1. On a careful re-appreciation of the oral and documentary evidence, we are of the opinion that the appellant has failed

to produce any evidence to show that the jewellery was presented to her either by her parents or her husband either at the time of marriage or thereafter.

8. As regards the second submission of the learned counsel for the appellant, among Exs.A-3 to A-16, Ex.A-3 voucher issued by Krishnadas & Company Jewellers stands in the name of the appellant. All other exhibits are either receipts or vouchers, which do not bear the exclusive name of the appellant. Moreover, all those documents have been produced from the custody of respondent No.1. Inasmuch as Ex.A-3 was issued in the name of the appellant, it is reasonable to presume that the said item of jewellery was presented by respondent No.1 to the appellant. Therefore, by application of the provisions of Section 3 of the Act, we hold that the appellant is entitled to claim gold ornament weighing 5.5 grams purchased under Ex.A-3 voucher, dated 06.11.1995. Barring this item, the appellant is not entitled to claim any other item.

9. For the aforementioned reasons, we partly allow the appeal to the extent of gold item shown in Ex.A-3, by holding that the appellant is entitled to the said item and respondent No.1 shall return the same to the appellant. The rest of the order of the Family Court stands confirmed.

10. As a sequel to partly allowing the appeal, F.C.A.M.P.No.182 of 2017 filed by the appellant for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

T.RAJANI, J

10th April, 2017
GHN