

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No. 20 of 2014**

- Smt. Yamini (Bharti), D/o Shri Deen Dayal Nag, W/o Shri Makhan Lal Giriyam, aged about 26 years, R/o B-73, Pragati Nagar, Korba, Post – Deepka, Police Station Deepka, Civil & Revenue District – Korba (C.G.)

---- Appellant**Versus**

- Makhan Lal Giriyam, S/o Panna Lal Giriyam, Maa Ka Ashirwad Dispensary, Ugali Road, Kewjari Post, Police Station & Tahsil – Kewjari, District Seoni (M.P.)

---- Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate.
For Respondent	:	None, though served.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Order on Board****Per Manindra Mohan Shrivastava, J****25/09/2018**

1. By this appeal under Section 19(1) of the Family Court Act, 1984, the Appellant/wife has prayed for passing a decree in respect of the ornaments also. By the impugned judgment decree learned trial Court granted a decree of judicial separation, under Section 10 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act'). The Appellant/wife also moved an application under Section 27 of the Act claiming return of ornaments and other house hold items which was partly allowed. This appeal is confined to those to that part of the relief which was denied by the learned trial Court.

2. An application under Section 10 of the Act was filed by the Appellant/wife against the Respondent/husband for grant of judicial separation on the allegation of cruelty. A criminal case was also stated to have been registered. Though, a reply was filed by the Respondent/husband before the trial Court, but later on, he did not contest the matter and was proceeded ex-parte. The suit filed by the Appellant/wife culminated in the ex-parte decree of a judicial separation as also an order under Section 27 of the Act directing return of house hold items except the ornaments.
3. Learned counsel for the Appellant/wife contended that as the specific and categoric evidence with regard to purchase of gold ornaments by the father of the Appellant/wife, namely Deen Dayal Nag (PW-2) has remained uncontroverted and the Appellant/wife has emphatically deposed in her evidence that these gold ornaments were forcibly taken away from her by her husband and not given back to her has also remained uncontroverted, the learned Family Court ought to have passed an order for return of the ornaments also while passing the order in the proceedings. Taking this Court to the pleadings made in this regard and the evidence of PW-1 and PW-2, it is submitted that the Appellant/wife has not only specifically pleaded regarding the nature and type of ornaments but has also proved purchase of the same by producing the bills in that regard. In the absence of there being any contest on the issue that the gold ornaments were taken away from the Appellant/wife and not returned to her, Appellant/wife may be granted appropriate relief.
4. In this appeal despite service of notices, Respondent has chosen not to appear.
5. In the application under Section 10 and 27 of the Act, the Appellant/plaintiff has categorically stated in para 5 regarding the gifts made which included

cash, gold and silver ornaments as also daily useables. In the first item of the chart shown in para 5 of the plaint it has been specifically pleaded regarding gifts of ornaments which included chains, rings and other ornaments. This specific pleadings is however, denied by the Respondent/husband.

6. It is relevant to note that in para 5 it was not only pleaded that these gold ornaments were given at the time of marriage, but it also been specifically pleaded that on the date of filing of application these gold ornaments were in possession of the Respondent/husband, though, this fact has been disputed in the written statement.
7. The Appellant/wife has examined herself as the first witness to prove her case and deposed that her marriage were solemnized with the Respondent on 11.02.2009 and at the time of marriage, number of house hold goods, useables were gifted. In para 3 of her evidence she has very categorically stated regarding she having been gifted three Mangalsutras (chains), four rings out of which, one was given to the Respondent/husband, one golden chain, two pairs of earrings and three nose pins. In her further evidence, she has stated that, later, on raising a demand, she was being harassed as she became weak due to prolonged sickness and without being provided proper treatment, she was brought back to the parental house at Korba. Later on a criminal case was also registered. In para 3 of her evidence, she has clearly stated that all the gold ornaments were left behind in the matrimonial house. This part of her evidence has remained uncontroverted.
8. Deen Dayal Nag (PW-2) the father has deposed in his evidence that at the time of marriage, apart from gifting house hold items, gold ornaments were also gifted. In para 4 of his evidence, he has given specific details of the gold, chain, rings as stated in the evidence of the wife (PW-1). He also

produced the bills of purchase of gold ornaments as Ex.P-4, P-5, P-6, P-7, P-8, P-9, P-10 and P-11. This categoric evidence of purchase and bills of purchase produced before the Court below have remained uncontroverted.

9. From the categoric pleading proved by emphatic evidence regarding the Appellant/wife have been gifted gold ornaments by her father, fully supported from the bills produced by him and coupled with the categoric evidence that all this gold items were left behind the matrimonial house, all of which have been remained uncontroverted, it is proved that the gold ornaments were gifted to the Appellant/wife but were left in the matrimonial house at the time when she was suddenly brought back to her maternal house in connection with her treatment. From the perusal of the purchase bills produced by the plaintiff/Appellant before the Court below the total increment of the gold ornaments, as per those bills, comes out to 83.52 grams.

10. Learned Family Court completely ignored that there is uncontroverted evidence which is reliable and supported by specific bills of purchase regarding gold ornaments and the evidence that it was left behind in the matrimonial house has also remained uncontroverted. On certain assumptions and presumptions, without appreciating the evidence on record, a perverse finding has been recorded that wife may not have left behind the gold ornaments which we are not inclined to uphold and accordingly reverse and hold that the Appellant has succeeded in proving that the ornaments specifically stated in para 3 of her evidence (PW-1) were left behind in the matrimonial house and that she is entitled to appropriate decree for return of those articles.

11. This appeal is, therefore, allowed and impugned judgment and decree is modified in the manner that in addition to the decree for return of articles

mentioned in the judgment decree of the trial Court, the Appellant/wife shall also be entitled to return of three Mangalsutras (chains), four rings, one gold chain, one gold earring (Jhumka) and another golden rings (Latkan) and three golden nose pins from the Respondent/husband. The Respondent/husband shall be liable to return the gold items weighing 83.52 grams or its value as on the date of the judgment and decree.

12. Appeal is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Gautam Chourdiya)
Judge