

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 09.05.2018

Delivered on 14.05.2018

First Appeal (Misc.) No. 53 of 2015

(Arising out of judgment and decree dated 30.01.2015 of the Additional District Judge, Sarangarh in Civil Suit No. 4A/2015)

- Smt. Priyanka W/o Prince Agrawal, D/o Anil Agrawal Aged About 25 Years R/o Champa, Tahsil And District Janjgir-Champa, Chhattisgarh.

---- Appellant

Versus

- Prince S/o Pawan Kumar Agrawal Aged About 26 Years R/o Village Sarangarh, Raigarh Road, Sarangarh, Tahsil-Sarangarh, District- Raigarh, Chhattisgarh, Chhattisgarh

---- Respondent

And

First Appeal (Misc.) No. 54 of 2015

- Smt. Priyanka W/o Prince Agrawal, D/o Anil Agrawal Aged About 25 Years At Present R/o At Champa Tahsil And District Janjgir Champa, Chhattisgarh.

---- Appellant

Versus

- Prince S/o Pawan Kumar Agrawal Aged About 26 Years R/o Village Sarangarh, Raigarh Road, Sarangarh, Tahsil-Sarangarh, District Raigarh Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant	:	Smt. Nirupama Bajpai, Advocate
For Respondent	:	Shri Aditya Bharadwaj, Advocate

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. As these appeals arise from a single judgment, they are being disposed off by this common judgment.
2. In these appeals, the challenge is levied to the judgment and decree dated 30.01.2015 of the Additional District Judge, Sarangarh Distt. Raigarh,

Chhattisgarh in Civil Suit No. 4A/2015 to the extent that allegedly he has given the finding that appellant had subjected respondent with cruelty, and she is not entitled to get the property / Stridhan described in Schedule A of the plaint.

3. This is admitted by respondent that name, address and other particulars shown in the title of the petition are correct, both the parties are hindu and governed by Mitakshara Branch of Hindu Law, marriage of both the parties was solemnised on 11.05.2011 in accordance hindu religion and Marwadi rites and rituals at Sarangarh. She is living in her maternal house since 28.08.2011. She had lodged the report in police station Sarangarh regarding dowry harassment. A case was registered against him and his family members under Section 498A IPC.

4. In brief, the appellant's case is that seven lakh rupees cash, ornaments of silver and gold, clothes and other properties were given to respondent as dowry which are shown in Article A. After the marriage respondent and his family members started to harass her on account of dowry. On 29.09.2011, he ousted her.

5. In brief, the respondent's case is that this Court has no jurisdiction to order of returning back of Stridhan. Appellant was not taking interest in domestic work and frequently used to go in her maternal house. On 28.08.2011 she voluntarily went in her maternal house.

6. After conclusion of the trial of Civil Suit No. 4A/2015 filed by appellant and Civil Suit 12A/2014 filed by respondent, the trial Court disposed them off by aforesaid common judgment. Being aggrieved, appellant preferred these appeals.

7. Smt. Nirupama Bajpai, counsel for the appellant vehemently argued

that in Civil Suit No. 4A/2015, divorce granted to appellant but the trial Court given the finding that appellant treated respondent with cruelty. Stridhan is her exclusive property, but trial Court committed error by not ordering for its return to appellant. Thus, the aforesaid judgment and decree may be set aside on the point of cruelty and Stridhan.

8. Shri Aditya Bharadwaj, counsel for the respondent argued that the trial Court had not given any finding about cruelty committed by appellant, Stridhan is out of purview of Section 27 of the Hindu Marriage Act, 1955 (hereinafter called as 'the Act of 1955'), thus, appeals may be dismissed.

9. First and foremost question for adjudication before this Court is that, whether the trial Court has committed gross illegality while allegedly giving the finding that appellant had committed cruelty with respondent.

10. In the aforesaid judgment, trial Court had not given any finding regarding alleged cruelty committed by appellant. The trial Court had given the finding that appellant had deserted respondent which is not challenged by appellant.

11. Looking to the above mentioned facts and circumstances, this Court finds that the trial Court has not given finding that appellant allegedly had committed cruelty with respondent, thus, no question arises about committing gross illegality by the trial Court regarding this matter.

12. Second question for consideration before this Court is that whether the appellant is entitled to get property/ Stridhan described in Schedule A from respondent in aforesaid divorce petition filed by her.

13. It would be pertinent to mention the provisions of Section 27 of the Act of 1955, which reads as under:-

“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.”

14. In **Neel Kanth Jaiswal v. Manju Lata Jaiswal (Smt.)** {AIR2011Chh6} this Court has held in para 15 & 16 as under:-

“15. The scope of Section 27 of the Hindu Marriage Act, 1955 is limited and only order relating to property presented at or about the time of marriage may be made by the Court dealing with the issue triable under the Hindu Marriage Act, 1955 belonging jointly to both the husband and the wife. The claim of the respondent in the present suit shows that she has filed the suit for recovery of Stridhan belonging to her and owned by her. Provisions of Section 27 of the Hindu Marriage Act, 1955 does not provide the remedy for recovery of property other than the property presented at or about time of marriage belonging to husband and wife therefore, even otherwise independent suit or claim for recovery of Stridhan was not competent in the divorce proceedings. By filing present suit respondent has claimed the return of Stridhan which is maintainable in accordance with Clause (c) of Explanation 2 of Clause 1 of Section 7 of the Family Court Act, 1984, which reads as follows:

Section 7. (1)**** (a)****(b)*****

[Explanation : The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a)***** (b)*****

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d)***** (e)***** (f)***** (g)*****

16. In the light of aforesaid provisions the Court dealing with the case under Hindu Marriage Act, 1955 was not competent to decide the issue relating to return of Stridhan in terms of Section 27 of the Hindu Marriage Act, 1955.”

15. In the case in hand AW1 Priyanka Mittal does not say clearly and strongly in her statement given on oath that alleged property/ Stridhan mentioned in Article A shall be returned to her from respondent though the trial Court has wrongly mentioned in para 51 of the impugned judgment regarding this matter. She also does not say clearly and strongly that alleged property / Stridhan belongs jointly to both her and him.

16. Looking to the aforesaid judicial precedent laid down in **Neel Kanth Jaiswal (supra)** it is unequivocal that provisions of Section 27 of the Act of 1955, does not provide remedy for recovery of the property other than property presented at or about time of marriage belonging to husband and wife. In other words, a family Court while dealing with the matter under the Act of 1955, is not competent to order for returning back of Stridhan in terms of Section 27 of the Act of 1955. For returning back the Stridhan an independent suit would lie in accordance with the provisions of Clause (c) of Explanation 2 of Clause 1 of Section 7 of the Family Courts Act, 1984.

17. Looking to the above mentioned facts and circumstances, this Court finds that, appellant is not entitled to get property/ Stridhan described in Schedule A from respondent in aforesaid divorce petition filed by her.

18. After the complete appreciation of evidence discussed herebefore, this Court finds that both the appeals are devoid of merits, thus, the order of the trial Court relating to the return of alleged property / Stridhan is affirmed as to above extent. The appeals are dismissed.

19. Appellant shall bear her own costs as well as costs of respondent.

Sd/-

(Sharad Kumar Gupta)
JUDGE