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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1542-2014 (O&M)

Date of decision : 06.02.2018

Surinder Pal and others

... Appellant(s)

Versus

Amarjit Dhingra

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prateek Mahajan, Advocate
for the appellants.

Mr. Sandeep Arora, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant(s)-defendant(s) are aggrieved of the concurrent findings of fact, whereby the suit preferred by the respondent-plaintiff seeking mandatory injunction qua return of the dowry articles as per list (Ex.P-1) was partly decreed by the trial Court, but the lower Appellate Court being the last Court of fact and law, in the appeal of the plaintiff has decreed the suit *in toto* while dismissing the appeal of the defendant(s).

Mr. Prateek Mahajan, learned counsel appearing on behalf of the appellant(s)-defendant(s) submits that the respondent-plaintiff instituted the suit on the premise that marriage of his daughter, namely, Jai Bharti was solemnized through Sikh Rites in the month of September, 2005 and at that time, appellant(s)-defendant(s) along with other members of marriage party i.e. 300 person, attended the marriage and demanded dowry articles. Sufficient dowry articles were given to them, but unfortunately, Jai Bharti had died in her matrimonial home, resulting into, registration of an FIR bearing No.86 dated 27.09.2006 in Police Station, Amloh. The accused-

persons have been convicted vide judgment dated 21.01.2011 to undergo rigorous imprisonment for ten years, though the appeal before this Court is stated to be pending. The stand of the appellant(s)-defendant(s) before the trial Court was that the plaintiff miserably failed to prove the original list, which was stated to have handed over to the appellant(s)-defendant(s), at the time of marriage, as he admitted that he had prepared the copy, but produced an other copy, which had a long list of articles. The trial Court while noticing the evidence of the photographs of the marriage only ordered for return of six articles, but the lower Appellate Court being the last Court of fact and law without assigning any reasons in paragraph 13 allowed the appeal, therefore, there is an abdication, much less, non-compliance to the provisions of Order 41 Rule 31 of the Code of Civil Procedure. In this regard, he has also drawn the attention of this Court to the statement of PW-2 Raj Kumar, the witness to the articles, who in cross-examination denied that the list was prepared in his presence nor dowry articles reflected in the list were purchased in his presence.

He further submits that the plaintiff miserably failed to prove on record purchased bills with regard to the dowry articles and therefore, finding of the lower Appellate Court is based upon the surmises and conjectures, much less, also lacks reasoning, thus, urges this Court for setting aside the findings under challenge.

On the contrary, learned counsel appearing on behalf of the respondent-plaintiff submits that the finding rendered by the lower Appellate Court being the last court of fact and law does not call for inference. The factum of the marriages and death of the daughter is not denied. The list had been proved to the hilt through the testimony of Raj

Kumar as well as the photographer. It is a common practice amongst the Hindus, even where some articles are given at the time of marriage, that were considered as gifts, which would be *stridhan*. The appellant(s)-defendant(s) had been torturing the daughter, resulting into, death in matrimonial home. All these factors were weighted in the mind of the Court below, thus, urges this Court for upholding the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the lower Appellate Court being the last Court of fact and law is required to adjudicate the appeal by referring to all the documentary evidence, much less, statements of the witnesses. For the sake of brevity, the findings rendered in para 13 of the judgment reads thus:-

"13. The main ground of the appeal taken by the defendants for the purpose of filing the appeal is that the judgment and decree under appeal is against law and facts and the learned trial Court did not apply its judicial mind at the time of passing of the same and as such the same are liable to be set aside. The next stand taken by the defendants is that the findings of the learned trial Court on issues No.1,3,4 are illegal and erroneous and the same are liable to be reversed in favour of the defendants. The plaintiff has failed to prove that the alleged articles are lying in the custody of the defendants. The learned trial Court as per next stand of defendants failed to appreciate the contradictions in the statements of witnesses of the plaintiff. The ground of the appeal taken on the other by the plaintiff for the purpose of filing the appeal is that the judgment and decree to the extent vide which the relief, as per list of dowry articles, was not granted and permanent injunction is against law and facts. The learned trial Court did not go through the file properly while passing the judgment and decree under appeal. The next stand taken by the plaintiff

is that the findings of the learned trial Court on issues No.1 and 3 are illegal and erroneous and the same are liable to be reversed in favour of the plaintiff. However, the FIR No.86 dated 27.9.2006 was registered under Section 304-B/34 police station Amloh, as per statement of plaintiff against the defendants. The challan after completion of investigation beore the Court against the defendant No.1 Zishan Arora @ Rajan and the defendant No.4 Parvesh Kumari @ Pinki. T he defendants No.1 Surinderpal and the defendant no.3 Bhavinsh Arora were kept in column no.2. The said defendants no.2 and 3 were summoned under section 319 of Cr.P.C. but the order dated 19.1.2007, vide which, the said defendants were summoned, was set aside by the Hon'ble Punjab and Haryana High Court. The defendant no.2 Zishan Arora @ Rajan and the defendant no.4 Parvesh Kumari @ Pinki who only faced trial as per copy Ex.px of judgment dated 21.1.2011 passed in terms of Sessions case no.25RT dated 14.12.2006, were convicted under section 304-B of IPC and vide order dated 14.12.2006 were sentenced to undergo rigorous imprisonment for ten years each. The defendants while contesting the said claim of the plaintiff admitted the fact of giving fridge, washing machine and TV by the parents of Jai Bharti since deceased on her marriage to her but the defendants took specific stand that the said articles were lifted by the plaintiff and his relatives from their house. Now question arises as to whether the defendants would be able to establish that the said articles were taken/lifted by the plaintiff from the house of the defendants or not. The defendants conducted cross-examination to the plaintiff and all the supporting witnesses but could not establish the said fact as rightly held by the learned trial Court. The plaintiff was not required any permission from the learned trial Court to lead secondary evidence to prove copy Ex.P1 of list of dowry articles from the original one, but was only required to lead secondary evidence

as per provisions of the Indian Evidence Act as the primary evidence is led generally under the other provision of the Indian Evidence Act. Any how the said articles were also shown in the photographs, given at the time of marriage of Ms. Jai Bharti since deceased daughter of the plaintiff to the defendants. The defendants could not rebut the existence of the photographs Ex.PW4/A to Ex.PW4/U rather the defendant no.2 admitted that Guru Bedi Ji Maharaja was putting gold chain around his neck as shown in photographs Ex.PW4/R. The defendant no.2 also admitted that his father and father-in-law were present in photograph Ex.PW4/B. The stand of the defendants taken to the effect that plaintiff was not entitled to claim of the dowry articles is not found to be sustainable as rightly held by the learned trial Court because the plaintiff being father of Jai Bharti since deceased, was rightly held entitled to the dowry articles given by him at the time of marriage of his daughter to the defendants. The suit for mandatory injunction for recovery of dowry articles filed by plaintiff after causing death of his daughter by the defendants No.2 and defendant no.4, convicted and sentenced, is maintainable against the defendants. The suit for permanent injunction for protecting the recovery of dowry articles from the defendants is maintainable. The list Ex.P1 of dowry articles could not be rebutted by the defendants rather some of the articles referred in the same were shown in the photographs Ex.PW4/C, Ex.PW4/L and Ex.PW4/N proved by PW-4 Sonu photographer examined by plaintiff and resulting of which the part of list Ex.P1 of the dowry articles cannot be termed as correct rather list of articles referred in the same is to be taken as correct and the plaintiff is entitled to all the articles referred in list Ex.P1 from the defendants instead of some articles referred in the same as held by the learned trial Court against the spirit of law of such kind of disputes and resulting of which, the contention of learned counsel for the

plaintiff raised with regard to the said issues is found to be sustainable from all corners and resulting of which, it is concluded that the portions of the issues which were not decided by the learned trial Court in favour of the plaintiff are reversed in favour of plaintiff and the finding which were partly returned for deciding issues partly by the learned trial Court in favour of the plaintiff, are affirmed and all the issues are decided completely in favour of the plaintiff."

On perusal of the aforementioned finding, the reasoning, in my view, is lacking application of mind as statement of eye-witness, PW-2 Raj Kumar, has not been read or adverted to. The lower Appellate Court is also required to formulate the points of determination as per the provisions of Order 41 Rule 31 of the Code of Civil Procedure. In my view, the findings are not rationale, but fallacious, thus, it requires re-adjudication.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted to the lower Appellate Court to decide the appeal as well as cross-appeal filed by the plaintiff as both the appeals were adjudicated by a common judgment and decree.

The parties or through their counsel are directed to appear before the lower Appellate Court on 05.03.2018.

With the aforesaid observations, the appeal stands disposed of.

06.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓
Whether Reportable Yes/ No