

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2019

PRONOUNCED ON:14.10.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.302 of 2011

and

M.P.No.1 of 2011

Loganathan ... Appellant/1st Defendant

Vs.

1. Sulochana ... 1st Respondent/Plaintiff

2. The Deputy Collector (Revenue),
Saram, Revenue Department,
Government of Pondicherry,
Pondicherry. ... 2nd Respondent/2nd Defendant

Prayer:

First Appeal filed under Section 96 of C.P.C., r/w Section 19 of the Family Courts Act against the Judgment and Decree dated 28.02.2011 passed in O.S.No.17 of 2006 on the file of the Judge, Family Court, Pondicherry.

For Appellant : Mr.V.Raghavachari

For RR1 : No appearance
Set exparte vide order dated 17.09.2019

For RR2 : M/s. G.DJearany,
Government Advocate, (Pondicherry)

J U D G M E N T

Impugning the judgment and decree dated 28.02.2011 passed in O.S.No.17 of 2006 on the file of the Judge, Family Court, Pondicherry, the first defendant has come forward with this Appeal.

2. For the sake of convenience the parties are referred to as per their rankings in the trial court.

3. Suit for directing the first defendant to return the Stridhana properties enumerated in the plaint B and C schedules.

4. The case of the plaintiff in brief is that she is the wife of the first defendant and the marriage between her and the first defendant was solemnized on 12.06.1992 as per Hindu rites and customs and the plaintiff was provided with plenty of stridhana items consisting of golden bangle weighing 5 sovereigns, a gold dollar chain weighing 5 sovereigns, a gold necklace weighing 5 sovereigns, a minor chain weighing 2 sovereigns, a ring weighing 1 sovereign and 2 gold rings weighing ½ sovereign each and apart from the abovesaid gold ornaments, the plaintiff was also given a steel almirah, a steel cot, stainless steel vessels, brass utensils, a mixie, a grinder and a Hero Honda Motor Cycle and hand cash of Rs.40,000/-. The first defendant failed to act as a dutiful husband and failed to discharge the marital obligations. Out of the wedlock, one male child and one female child were born to the plaintiff and the first defendant. The first defendant is working as a driver and earning more than Rs.7,500/- per month. However, the first defendant had been spending the income lavishly and consuming alcohol and setup a concubine at the same locality and when the same was questioned by the plaintiff, the plaintiff and her children were beaten by the first defendant and the said torture continued and the plaintiff was sent out of the marital home in the year 2003 and thereafter a Panchayath was convened, but there was no response from the first defendant. The plaintiff and her children are now in the custody of her parents and they are unable to run the family, hence the plaintiff filed M.C.No.35 of 2004 against the first defendant for maintenance and the Court had ordered the first defendant to pay maintenance in a sum of Rs.500/- each to the plaintiff and her two children. The first defendant is attempting to dispose of all the stridhana articles brought by the plaintiff so as to deprive her lawful claim over the same. Hence according to the plaintiff she has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The first defendant resisted the plaintiff's suit contending that though the marriage between the plaintiff and the first defendant was solemnized as put forth in the plaint, according to him, he denied all the allegations contained in the plaint that the plaintiff has brought various gold ornaments and other articles as described in the plaint as stridhana articles and also denied that he had failed to act as a dutiful husband and discharge the marital obligations and according to the first defendant, the plaintiff is an adamant lady and never discharged her marital obligations towards the first defendant. Though the first defendant was admitted in the hospital for the head injuries, the plaintiff never accompanied with him to the hospital and taken care of him and used to go to her parents house with a view to avoid the first defendant in the hospital. The first defendant denied the case of the plaintiff that he has been earning Rs.7,500/- per month and spending the same lavishly by consuming alcohol and keeping concubine. The first defendant also denied all the allegations mentioned against him in the plaint and the plaintiff was constrained to leave the matrimonial home in the year 2003 as put forth in the plaint and also denied that the Panchayath was convened and the first defendant had not responded to the Panchayath decision. The plaintiff never respected the first defendant and in connection with one Rani @ Muthulakshmi, the first defendant was not having good relationship with Rani @ Muthulakshmi and also instructed the plaintiff not to have any relationship with her. But the plaintiff quarreled with the first defendant and at the ill advice of Rani @ Muthulakshmi and one Sivagnanam quarreled with the first defendant in the year 2004 and laid a false complaint with the police and the enquiry was convened by the police and when the first defendant returned home after the police enquiry, noted that the plaintiff and the children had left the matrimonial home to her parents house voluntarily and taken away the utensils and other household articles with her. The plaintiff is doing money lending business and hence she is earning a sum of Rs.10,000/- per month. The first defendant denied the allegation that he is taking steps to dispose of all the gold ornaments and other household articles given to the plaintiff as stridhana properties. According to the first defendant the plaintiff belong to a poor family and her parents did not give any stridhana properties except $\frac{1}{2}$ sovereign earring and $\frac{1}{2}$ gram of nose ring and the first defendant also had not demanded anything from the plaintiff's family and denied that the plaintiff had brought the stridhana articles described in the plaint B and C schedules and further would state that the plaintiff had taken away all the stridhana properties given by her parents from the house of the first defendant when she left the matrimonial home and the same is known to the local people.

The first defendant also denied that the plaintiff's parents had given Hero Honda Motor Cycle and cash of Rs.40,000/- along with other items. According to the first defendant, there is no cause of action for the plaintiff to institute the suit. Therefore the suit is liable to be dismissed.

6. It is found that the first defendant has levelled MOP.No.161 of 2006 seeking divorce against the plaintiff. Both O.S.No.17 of 2006 and MOP.NO.161 of 2006 were jointly tried and common evidence has been recorded in O.S.No.17 of 2006.

7. On the basis of the abovesaid pleas, the following issues were framed by the trial court in O.S.No.17 of 2006.

(i) Whether the properties described in schedules B and C are available with the first defendant?

(ii) Whether the plaintiff is entitled for a decree for return of the properties described in schedules B and C from the first defendant?

(iii) To what relief the parties are entitled to?

8. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Ex.A1 was marked. On the side of the first defendant, D.Ws.1 to 3 were examined. Exs.B1 to B5 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for and dismissed the divorce petition laid by the first defendant. Aggrieved over the judgment and decree passed in O.S.No.17 of 2006, the present First Appeal has been preferred by the first defendant.

10. The following points arise for determination in the First Appeal:

(i) Whether the plaintiff is entitled to seek the return of stridhana articles described in the plaint B and C schedules from the first defendant as putforth in the plaint?

(ii) To what relief the plaintiff is entitled to?

(iii) To what relief the first defendant/appellant is entitled to?

Point No.1:

11. The marriage between the plaintiff and the first defendant is not in dispute. It is also found that out of the

wedlock, one female child and one male child were born to the plaintiff and the first defendant. According to the plaintiff, the first defendant was not discharging his marital obligations and on the other hand ill-treated her and her children and beat them and therefore according to the plaintiff she and her children were constrained to leave the matrimonial home and live with her parents and further according to the plaintiff she had brought the stridhana articles as described in the plaint B and C schedules which had been provided to her by her parents at the time of her marriage and the first defendant according to her, is attempting to dispose of the same for the purpose of meeting his illegal acts and according to the plaintiff, the first defendant had been spending the income lavishly by consuming alcohol and keeping concubine and hence according to the plaintiff she has been necessitated to lay the suit against the first defendant for the return of stridhana articles described in the plaint B and C schedules.

12. The first defendant resisted the plaintiff's suit contending that it is only the plaintiff who had failed to discharge the marital obligations and acted against the first defendant at the instigation of one Rani @ Muthulakshmi and one Sivagnanam who had quarreled with the first defendant and also contended that at their insistence, the plaintiff laid a false complaint against the first defendant and the first defendant denied the case of the plaintiff that she had brought the stridhana articles as described in the plaint B and C schedules and according to the first defendant, no such stridhana articles had been provided to the plaintiff by her parents at the time of marriage and her parents were not in a capacity to provide such stridhana articles on account of their penurious conditions and it is putforth that the plaintiff had only brought $\frac{1}{2}$ sovereign of earring and $\frac{1}{2}$ g of nose ring at the time of marriage and therefore denied the plaintiff had brought the stridhana articles as described in the plaint and also putforth the case that the plaintiff had taken away all the stridhana articles given by her parents when she left the matrimonial home and therefore, according to the first defendant the plaintiff is not entitled to maintain the suit and the suit is liable to the dismissed.

13. As above pointed out, the marriage between the plaintiff and the first defendant is not in dispute. The plaintiff's case is that she had been provided with various stridhana articles both gold and other household utensils as detailed in the plaint B and C schedules and to sustain her abovesaid case, the plaintiff has tendered evidence and also examined her mother in law as P.W.2. Both the plaintiff

examined as P.W.1 and her mother -in- law examined as P.W.2 had tendered clear evidence about the various golden ornaments provided to the plaintiff by her parents at the time of marriage and also the factum of the other articles provided to the plaintiff by her parents and also the purchase of the motorcycle by the plaintiff's parents and the handing over of the cash of Rs.40,000/- and accordingly it is found that as rightly determined by the trial court, despite the cross examination of P.Ws.1 and 2, nothing has been culled out from them to disbelieve their evidence with reference to the abovesaid aspects of the matter. Further according to her, her father was owning considerable lands at Dindivanam and accordingly it is found that as held by the trial court, the plaintiff's parents were capable of providing sufficient golden articles to the plaintiff at the time of the marriage. If really the plaintiff had not been provided with stridhana articles as detailed in the plaint, as contended by the plaintiff's counsel, the first defendant's mother namely P.W.2 would not have tendered evidence in support of the plaintiff's case. On the other hand, the mother of the first defendant as P.W.2 has clearly tendered evidence about the various golden ornaments and other articles provided to the plaintiff by her parents and also deposed about the ill-treatment meted out to the plaintiff by the first defendant and according to P.W.2, the first defendant also failed to provide support to her and thereby she had been necessitated to live with the plaintiff and therefore it is found that the first defendant had neither evinced interest to support the plaintiff and her children as well as support his mother and accordingly it is found that only on account of his illegal activities, as putforth by the plaintiff, the first defendant had failed to discharge his marital obligations towards the plaintiff and also failed to discharge his obligations as a son towards his mother namely P.W.2. Accordingly, it is found that on account of the ill-treatment caused by the first defendant, the plaintiff and her children were constrained to leave the matrimonial home and stay in her parents house. Further according to the plaintiff though the Panchayath has been convened to settle the issues between the parties, the same could not be given effect to on account of the refusal of the first defendant to heed to the advice of the Panchayath.

14. As held by the trial court, from the evidence adduced on the side of the first defendant, it is found that there is no relationship between the plaintiff and the first defendant prior to the marriage and therefore it is seen that the marriage between the plaintiff and the first defendant is only an arranged marriage and accordingly considering the

solemnization of the marriage by the parents as deposed by the plaintiff as well as the evidence of P.W.2, in all, it is found that the case of the plaintiff that she had been provided with various stridhana articles as detailed in the plaint merits acceptance as held by the trial court.

15. Though the first defendant would claim that the plaintiff had brought only 1/2 sovereign of earring and 1/2g of nose ring at the time of marriage quite inconsistent to the abovesaid pleas, has also pleaded that the plaintiff had taken away all the stridhana properties given by her parents from the first defendant's house when she left the matrimonial home. Therefore, impliedly thereby, the first defendant has admitted that various stridhana properties had been given to the plaintiff by her parents and accordingly pleaded that the same had been taken away by the plaintiff when she left the matrimonial home. Now according to the first defendant when he returned home after attending the police enquiry, he found the plaintiff having left the matrimonial home with children and according to him at that time, the plaintiff had taken away all the stridhana properties given by her parents. However, according to the plaintiff she had been forced to leave the matrimonial home on account of the ill-treatment and torture caused by the first defendant and accordingly it is found that the plaintiff had left the matrimonial home only to the knowledge of the first defendant and in such a scenario, the case of the first defendant that the plaintiff had taken away all the stridhana articles when she left the matrimonial home as such cannot be believed and accepted. As held by the trial court, the plaintiff would not be in a position to take away all the stridhana articles when she had been forcibly driven out of the matrimonial home by the first defendant on account of his ill-treatment. Therefore, as contended by the plaintiff's counsel, the first defendant is not definite about the case as to whether the plaintiff had brought the various stridhana properties or only brought 1/2 sovereign of earring and 1/2 g of nose ring and accordingly it is found that the he has taken inconsistent pleas and also has pleaded that the plaintiff had taken away all the stridhana properties given by her parents when she left the matrimonial home. It is found that the provision of the stridhana properties to the plaintiff by her parents had been accepted by the first defendant and accordingly he had putforth the defence that the same had been taken by the plaintiff when she left the matrimonial home. Therefore, considering the pleas putforth by the first defendant in entirety as well as the evidence of P.Ws.1 and 2 in toto and when there is no motive on the part of the first defendant's mother to depose against him, in all, it is found that the

plaintiff has clearly established the provision of the stridhana properties to her by her parents and their capacity to provide the same to her and the retention of the said articles by the first defendant at the matrimonial home.

16. Though the first defendant had examined two witnesses in support of his version, however considering their evidence in toto, when there is no proof on the side of the first defendant and the evidence adduced on behalf of D.Ws.2 and 3 that the plaintiff's father was engaged in coolie work and when the evidence of D.Ws.2 and 3 are found to be not inspiring, convincing and trustworthy, as rightly held by the trial court and when the first defendant would even go to the extent of contending that his mother is a drunkard without any basis, in all, it is found that the trial court had rightly disregarded the evidence adduced on the side of the first defendant and rightly placed reliance upon the evidence adduced on behalf of the plaintiff and thereby concluded that the stridhana properties described in the plaint B and C schedules were provided to the plaintiff by her parents and the same are now only in the custody of the first defendant and accordingly when it is found that the plaintiff had been forced to leave the matrimonial home on account of the ill-treatment and torture caused by first defendant to her and when the apprehension of the plaintiff is that the first defendant is attempting to dispose of all the stridhana properties for satisfying his illegal needs, in all, it is found that the trial court had rightly concluded the suit in favour of the plaintiff and considering the reasons and conclusions of the trial court, when it is found that the trial court has analysed the evidence projected properly and correctly appreciated the materials placed on record and the same are not suffering from any infirmity or perversity, in all, it is found that the determination of the trial court that the first defendant is liable to handover the stridhana properties as described in the B and C schedules to the plaintiff do not warrant any interference. Accordingly, I hold that the plaintiff is entitled to recover the stridhana properties as described in the plaint B and C schedules from the first defendant as claimed and as determined by the trial court and accordingly the Point No.1 is answered in favour of the plaintiff and against the first defendant.

Point Nos.2 & 3:

17. For the reasons aforesaid, the judgment and decree dated 28.02.2011 passed in O.S.No.17 of 2006 on the file of the Judge, Family Court, Pondicherry, are confirmed and

resultantly the First Appeal is dismissed. No costs.
Consequently, connected miscellaneous petition, if any, is
closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa
To

The Judge,
Family Court,
Pondicherry.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to M/s.G.B.Saravanabhavan, Advocate SR.86014
+1cc to M/s.V.Raghavachari, Advocate SR.85673
+1cc to the Government Pleader(Pondicherry) SR.85766

A.S.No.302 of 2011
and
M.P.No.1 of 2011

CNR(CO)
CB(14/02/2020)