NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 101 of 2014

1. Abhishek Pandey, S/o Sudarshan Pandey, aged about 30 years,
2. Sudarshan Pandey, S/o Baldau Pandey, aged about 62 years,

Both are by Caste-Bramhan, R/o Bhitthi Road, Trimurti Bhawan, Kedarpur, Thana and Tahsil Ambikapur, Distt. Surguja (C.G.).

---- Appellants/Defendants

Versus

- Smt. Sangeeta Pandey, W/o Abhishek Pandey, aged about 28 years, Caste-Bramhan, R/o Godhanpur, Thana and Tahsil Ambikapur, District Surguja (C.G.).

---- Respondent/Plaintiff

FAM No. 117 of 2014

- Smt. Sangita Pandeya W/o Abhisek Pandeya, aged about 28 years, R/o Godhanpur, P.S. and Post – Ambikapur, Civl & Revenue District Surguja C.G.

---- Appellant/Plaintiff

Versus

1. Abhisek Pandeya, S/o Sudarshan Pandeya, aged about 30 years,
2. Sudarshan Pandey, S/o Baldau Pandeya, aged about 62 years,

Both R/o Bhatti Road, Trimurti Bhawan, Kedarpur, Ambikapur, P.S., Post & Tahsil Ambikapur, Civil & Revenue District Surguja C.G.

---- Respondent/Defendants

For the Appellant/ Defendants	:-	Mr. Hariom Rai on behalf of Mr. Jitendra Shrivastava, Advocate.
For the Respondent/ Plaintiff	:-	Mr. Shubhank Tiwari on behalf of Mr. Manoj Pranjpe, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

06.03.2020

Heard.

2. These two appeals, one filed by the plaintiff and other filed by the defendants arise out of common judgment and decree dated 11.09.2014 passed by the Family Court, Ambikapur in Civil Suit No. 100-A of 2011, whereby application of the plaintiff for return of Stridhan has been partly allowed.

3. The plaintiff Sangita Pandey moved an application under Section 27 of the Hindu Marriage Act r/w Section 7 (I) (g) of the Family Courts Act, seeking decree of return of Stridhan as described in schedule A, B, C, D, E and F (appended to the plaint) on the pleadings that marriage between plaintiff Sangita was solemnized with defendant Abhishek Pandey on 28.06.2009, according to Hindu rites and rituals. It was alleged that after sometime, in connection with demand of dowry and also vehicle, she was subjected to cruelty and thereafter, she was taken away from the matrimonial house and brought to her parental house. According to the pleadings contained in paragraphs 5 to 8 of the plaint, number of gift items were given at and about the time of marriage between the parties, details of which were given in schedule appended with the plaint and all those articles, belonging to the plaintiff, are liable to be returned. An additional prayer was also made for return of Rs.7 lacs which, according to the plaintiff, was given by her father at the time of her marriage.

4. As far as, plaintiff's claim for return of Stridhan is concerned, in response to the pleadings made in paragraphs 5 to 8, defence of the defendants was that the plaintiff's claim for return of Stridhan is exaggerated. According to the defendants, though Rs.6 Lacs was given, the same was utilized to bear expenditure of marriage including purchase of jewelleries, food etc. Other articles were given as gifts to his son, which, cannot be said to be Stridhan. It was also pleaded that at the time of living matrimonial house plaintiff had taken away along with her, all her clothes and jewelleries and some old clothes are only lying behind.

5. On the basis of the pleadings of the parties, the learned Family Court framed issues, allowed the parties to lead oral and documentary evidence. Vide impugned judgment and decree, the learned Family Court partly allowed the claim of the plaintiff. Excluding some of the articles mentioned in schedule A, B, C, D, E remaining articles listed in the list were ordered to be returned.

As far as, car is concerned, the claim was given up because the car had already been returned. As far as cash amount Rs. 7 lacs is concerned, the learned Family Court held that the plaintiff was not entitled to the same as the same was voluntarily given by the father of plaintiff to the father of defendant Abhishek Pandey for meeting expenditures and purchase of jewelleries.

6. Aggrieved by the aforesaid judgment and decree plaintiff as well defendants both have filed the present appeals.

7. Learned counsel appearing for plaintiff Sangita would submits that as far as plaint of the plaintiff with regard to various articles contained in schedule in A, B, C, D, E is concerned, it has been allowed. Excluding certain articles on the finding that the same belongs to the husband, the rejection of plaintiff's claim for return of Rs.6 Lacs suffers from illegality. He would submit that against specific pleadings made in the plaint, the defendants did not dispute and rather admitted having received the amount. The evidence of the defendants is that the said amount was used for various purchases. While gold and silver jewellry purchased out of this fund, have been directed to be returned, as far as balance amount is concerned, the plaintiff was entitled to return of the said amount because it has not only been specifically pleaded but also proved that the said amount was given for the happy and peaceful living of the plaintiff Sangita, by her father. Therefore, entire amount of Rs. 6 Lacs is liable to the returned to her without making any adjustment in respect of the jewelleries which are said to be purchased vide Ex.D-3 and Ex.D-4 and which have been directed to be returned to the plaintiff.

8. Learned counsel appearing for the defendants, in the connected appeal, would submit that the learned Family Court committed gross illegality in directing return of articles/items mentioned in scheduled A, B, C, D and E even without there being any cogent proof that those articles were purchased by the plaintiff or her father for being gifted to the plaintiff at or about at the time of her marriage. He would next submit that each and every item which was said to have been purchased and in respect of which, bills have been submitted, cannot be said to be Stridhan because many of those articles were intended for joint use of the husband and wife both, therefore, those articles could not be returned to the wife. He would further submit that as far as cash amount of Rs. 6 Lacs is concerned, even though, the receipt of the same has not been disputed, there is clear evidence that the said amount was given by the father of the plaintiff voluntarily towards sharing of expenditure in connection with marriage and in fact the defendants have come out with the case that from this fund, only jewelleries worth Rs.2,70,282/- were purchased vide Ex.D-3 and Ex.D-4, by the father of the defendant No.1 Abhishek. Remaining amount was utilized for expenditure incurred in the marriage which was jointly borne by both the sides therefore, the Family Court committed no illegality in said claim.

9. We have heard learned counsel for the parties and perused the record.

10. The plaintiff's claim for return of Stridhan or others articles, said to be gifted, at or about the time of marriage, is based on pleadings contained in paragraphs 5, 6, 7 and 8. The plaintiff, along with plaint, appended Schedule A, B, C, D, E and F which contains number of items including electronic gadgets, households, furnitures, washing machine, television, gold and silver jewellery, clothes, car as well as cash. In order to prove its case, the plaintiff produced as many as 13 bills Exhibited as Ex. P-1 to Ex. P-13. We find that the bills which have been produced by the plaintiff are not in respect of the entire items which were shown in various lists appended along with the plaint.

11. At the outset, it needs to be clarified that as well as car is concerned, the same has already been returned and, therefore, no orders were required to be pass by the learned Family Court in respect of that item.

12. When we look into various bills which have been submitted by the plaintiff, we find that the bills correspond to some of the articles which have been mentioned in various items in Schedule A to E. However, the bills do not correspond to each and every articles/items which has been mentioned in these lists. Though, the plaintiff has come out with certain oral admissions, that is not sufficient to prove that each and every item shown in the schedule was purchased and gifted to the plaintiff at or about at the time of marriage. In order to make out a case of return of Stridhan, the plaintiff is not only required to plead specific articles/gifts, which were given to the plaintiff, at or about the time of marriage, but a clinching evidence with regard to purchase of those articles is also required to be led. Mere self serving statement of purchase and gifts of item cannot be made a basis to order return of Stridhan. In respect of those articles for which, bills have not been produced, those articles could be directed to be returned only when they are admitted by the defendants to have been gifted to the plaintiff.

13. The defendants, in their written statement as well as in their evidence, have not denied the plaintiff's case in entirety. According to the pleadings made by the defendants, refuting allegations contained in paragraph 5, 6, 7 and 8 of the plaint, they have stated that the plaintiff's claim is exaggerated. They also admit that various articles, as mentioned by the plaintiff, were gifted but their case is that these articles were gifted to defendant No.1 Abhishek at or about the time of marriage and therefore, those articles could not be directed to be returned to plaintiff as they are not for the exclusive use of the plaintiff.

14. The plaintiff's claim for return of Stridhan could be allowed only in respect of those articles in respect of which, not only pleadings have been made but specific evidence and bills as reliable evidence of purchase, have been placed on record. When we look into the evidence on record we find that number of articles as stated in Schedule A, B, C & D which are said to have been purchased and gifted, are supported by bills Ex.P-1 to Ex.P-13. Certainly, all these articles which have been mentioned in the Schedule A to D and in respect of which bills have been produced vide Ex.P-1 to Ex.P-13 are liable to returned to the plaintiff.

15. However, in respect of remaining items which are not supported by any bills of purchase, those articles could be directed to returned only when there is an admission on the part of the defendants that those articles were gifted at or about the time of marriage. Those articles are dressing table/tea table, as mentioned in Schedule B and articles *Gadda*, Sofa, Cover, *Rajai*, *Chadar* (mattress, sofa, cover, blanket, bed sheet) mentioned in Schedule C and those articles being old and ornament jewelleries which have been admitted as having been purchased vide Ex.D-3 and Ex.D-4. Defendant's Witness DW-1 (father of Abhishek) has admitted in his cross-examination regarding receipt or purchase of the articles as aforesaid. Therefore, these articles, in addition to those which are covered by bills Ex.P-1 to Ex.P-13, are also liable to be returned. In the pleading as well as in the evidence of the defendants, there is clear admission of receipt of Rs.6 Lacs and the plaintiff have also led clear evidence of transfer of such amount by way of cheque issued in favour of defendant's father Sudarshan and bank statements have also been produced. Therefore, it is clear that Rs.6 Lacs were received by the respondent.

16. An argument has been raised before this Court that those articles and cash which are said to be given prior to the date of marriage cannot be treated to be Stridhan and are not covered under Section 27 of the Hindu Marriage Act in the matter of return of Stridhan. This argument of learned counsel for defendants is liable to be rejected in view of Supreme Court decision in the case of Balkrishna Ramchandra Kadam Vs. Sangeeta Balkrishna Kadam reported in (1997) 7 SCC 500 wherein it was held:-

> **"11. In our opinion, the Courts have not gone into the question in its correct perspective. The trial Court proceeded to negative the claim of**

the respondent-wife by holding that the Court had no jurisdiction to deal with the property rights of the parties and gave no opportunity to the parties to lead evidence in support of their respective claims. The finding of the trial court clearly overlooked the provisions of Section 27 of the Hindu Marriage Act which unmistakably vests the jurisdiction in the Court to pass an order, at the time of passing a decree in a matrimonial cause, in respect of the property presented, at or about the time of marriage, which may belong jointly to the husband and the wife. The learned Single Judge also fell in complete error while concurring with the view of the trial Court to say that there was no evidence on the record to show that the property claimed by the wife was presented to her at the time of her marriage. The learned Single Judge failed to take notice of the deposition of the respondent in that behalf. Moreover, the property, as contemplated by Section 27 is not the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression "at or about the time of marriage" has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "joint property", implying thereby that the property can be traced to have connection with the marriage. All such property is covered by Section 27 of the Act."

In another decision in the case of Krishna Bhattacharjee Vs. Sarathi Choudhary and another reported in (2016) 2 SCC 705 also legal position in this regard has been stated thus:-

"*24*. The next issue that arises for consideration is the issue of limitation. In the application preferred by the wife, she was claiming to get back her stridhan. Stridhan has been described as saudayika by Sir Gooroodas Banerjee in "Hindu Law of Marriage and Stridhan" which is as follows:-

"First, take the case of property obtained by gift. Gifts of affectionate kindred, which are known by the name of saudayika stridhan, constitute a woman's absolute property, which she has at all times independent power to alienate, and over which her husband has only a qualified right, namely, the right of use in times of distress."

25. The said passage, be it noted, has been quoted Pratibha Rani v. Suraj Kumar and Another [(1985) 2 SCC 370]. In the said case, the majority referred to the stridhan as described in "Hindu Law" by N.R. Raghavachariar and Maine's "Treatise on Hindu Law". The Court after analyzing the classical texts opined that:- (SCC p.377, para 7)

"7. It is, therefore, manifest that the position of stridhan of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes — she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt."

26. In the said case, the Court ruled: (Pratibha Rani case in (1985) 2 SCC, 370 SCC p. 385, para 28

"28. ...a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property."

27. The decision rendered in the said case was referred for a fresh look by a three-Judge Bench. The three-Judge Bench Rashmi Kumar (Smt) v. Mahesh Kumar Bhada[(1997) 2 SCC 397] while considering the issue in the said case, ruled that :- (SCC pp. 405-06, paras 9-10)

"9. A woman's power of disposal, independent of her husband's control, is not confined to saudayika but extends to other properties as well. Devala says: "A woman's maintenance (vritti), ornaments, perquisites (sulka), gains (labha), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress…." In N.R. Raghavachariar's Hindu Law — Principles and Precedents, (8th Edn.) edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law para 468 deals with "Definition of Stridhana". In para 469 dealing with "Sources of acquisition" it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with "Gifts to a maiden". Para 471 deals with "Wedding gifts" and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at page 426, it is stated that ornaments presented to the bride by her husband or father constitute her Stridhana property. In para 487 dealing with "powers during coverture" it is stated that saudayika meaning the gift of affectionate kindred,

> **includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.**
>
> **10. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."**

17. In view of the aforesaid decision, not only those articles/items, things or money which were given at the time of marriage but also those which were given before and after marriage provided that they are found to have been gifted in the process of marriage may also be construed 'Stridhan'.

18. The power of the Court to pass appropriate order with regard to disposal of property has been stated under Section 27 of the Hindu Marriage Act. The articles which are proved to have been given by the father of the plaintiff at or about the time of marriage are therefore, liable to be returned to the wife but, subject to what we have observed hereinabove. As far as cash amount is concerned, it is manifest that the cash amount was given by the father of plaintiff Sunita to Sudharshan – father of husband Abhishek. The gifts in the form of jewelleries, which were purchased vide Ex.D-3 and Ex.D-4 have been admitted to have been purchased from this fund only which is liable to be returned to the plaintiff. Out of Rs.6 Lacs, jewelleries costing Rs.2,70,282 have been utilized. The balance amount is therefore, liable to be returned to the plaintiff/wife as that was the amount admittedly given by the plaintiff's father to the defendants and there is overwhelming evidence that this was given in connection with marriage only and not for any any other purpose. Though, learned counsel for defendants sought to urge before us that in the evidence, the defendants have stated that this amount was paid by way of loan, such evidence is liable to be rejected in the absence of there being any pleading to that effect. In the written statement, while admitting receipt of Rs.6 Lacs, defendants have not come out that this amount was given by way of loan. The plaintiff's pleading that Rs.6 Lacs were given to defendants for happy and peaceful living of plaintiff Sangita has not been specifically denied. Therefore, the balance amount, deducting Rs.2,70,282 /- is also liable to be returned to the plaintiff.

19. In view of our conclusion as above, partly allowing the appeals filed by both the parties, we hold that the plaintiff is entitled to return of those items stated in Schedule A, B, C, D & E which were supported by the bills Ex.P-1 to Ex.P-13, gift items which are mentioned in Ex.D-3 and Ex.D-4 (excluding those which are also mentioned in Appendix-D), cash amount of

Rs.3,29,718 /-. In addition admitted articles namely dressing table, tea table of Schedule B and *Gadda*, Sofa, Cover, *Rajai*, *Chadar* of Schedule C are also directed to be returned to the plaintiff.

Plaintiff's claim in respect of the remaining articles which are not covered under any of the categories specified hereinabove are rejected.

20. Appeal thus allowed in part.

Let appellate decree be accordingly drawn in both appeals. Parties to bear their cost.

Sd/- Sd/-

(Manindra Mohan Shrivastava) **(Vimla Singh Kapoor)**

Judge **Judge**

Ajay