BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12985 of 2019

P.Janarthana ... Petitioner

Vs.

1. The Principal Commissioner of Income Tax,
Madurai – 1, No.2, V.P.Rathinasamy,
Nadar Road, Bibikulam, Madurai.

2. The Assistant Commissioner of Income Tax,
Central Circle-I, Income Tax Staff
Quarters Campus,
Kulamangalam Main Road,
Madurai.

3. The Assistant Commissioner of Income Tax
Circle -I,
40, Rehmath Nagar East,
Kamaraj Nagar, Tirunelveli – 627 002.

4. The Deputy Commissioner of Income Tax,
40, Rehmath Nagar East,
Kamaraj Nagar, Tirunelveli – 627 002.

5. The Income Tax Officer(H.Qrs.) - 1,
Office of the Principal Commissioner of
Income Tax, Madurai -1, No.2,
V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai.

6. R.Purushothaman
(R-6 is impleaded vide order dated 16.07.2020
in W.M.P.(MD)No.7125 of 2020) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to release the jewels forthwith.

For Petitioner : Ms.Lita Srinivasan
For R-1 to R-5 : Mrs.S.Srimathy,
Standing Counsel.
For R-6 : Ms.P.Jessi Jeeva Priya

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the Income Tax Department and the learned counsel appearing for the sixth respondent.

2. The petitioner states that she got married to the sixth respondent herein and they were having their matrimonial home at II Street, Perumal Puram, Tirunelveli. There was a raid on the said premises on 04.07.2006. According to the petitioner, the petitioner was living in the said matrimonial home along with her son and daughter during the relevant time and due to difference of opinion, the sixth respondent was not living in the premises then. During the raid, 75 sovereigns of jewels were seized. The officials of the Income Tax Department had drawn up a panch-nama setting out the list of jewellery seized. In the said panch-nama, it is the petitioner, namely, Mrs.Janarthana who had affixed her signature.

3. It is not in dispute that the demand of the Income Tax Department has since been settled. It appears that the sixth respondent, namely, the petitioner's husband had settled the claim of the Income Tax Department. Be that as it may, the Department cannot no longer retain the jewellery seized from the said premises in the year 2006. The petitioner therefore made a claim for return of the said jewellery. But the Department has taken the stand that since objection has been raised by the sixth respondent, namely, the husband of the petitioner, they are not in a position to return the jewellery to the petitioner. Therefore, this writ petition has been filed for directing the Income Tax Department to hand over the seized jewellery to the petitioner.

4. The stand of the Income Tax Department is that since there is a dispute between the petitioner and her husband, they are not in a position to hand over the jewellery to either party. The Department states that they will abide by the orders that may be passed by this Court.

5. The sixth respondent/husband had filed a detailed counter affidavit running to 96 paragraphs and spread over 24 pages. It is stated therein that the seized jewellery was purchased only by the sixth respondent and that therefore, the department must return the seized jewellery only to him and not to the petitioner. In fact this stand has also been reflected in the Lawyer's Notice dated 13.07.2018.

6. The learned counsel appearing for the sixth respondent reiterated all the contentions set out in the said counter affidavit. Her core argument is that in view of such a factual dispute, this Court will not be justified in giving the direction sought for by the petitioner. According to the learned counsel appearing for the sixth respondent, the question before this Court is who owns the seized jewellery; whether the petitioner or the sixth respondent. The petitioner had not produced even a scrap of material to show that the seized jewellery belongs to her. The learned counsel would point out that even according to the petitioner, the place where the raid took place belongs only to the sixth respondent and not to the petitioner. Hence it is only just and proper that the petitioner is relegated to the civil Court for establishing her so-called ownership over the seized jewellery. It is further contended that the issue has to be considered by the Tax Recovery Officer under Rule 11 of the Second Schedule to the Income Tax Act 1961. The learned counsel appearing for the sixth respondent called for dismissal of this writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. It cannot be in dispute that though the place where the raid took place belongs to the sixth respondent, it was very much the matrimonial home of the petitioner. During the relevant time, obviously, the sixth respondent was not available. It was only the petitioner who signed in the panch-nama. The panch-nama states that the following articles were seized:-

S. No.	Description of the articles	No.	Metal	Grams Wt.	Estimated net Wt.	Value Rs.
1.	BANGLES	9	Gold	10.69		
2.	BANGLES WITH STONES	5	„	81.55		
3.	CHAIN WITH DOLAR	2	„	62.70		
4.	CHAIN WITH METAL (STONE)	1	„	51.85		
5.	NECKLACE WITH STONES	3	„	83.60		
6.	BANGLE WITH STONES	1	„	97.90		
7.	ANKLET	1	„	48.80		
8.	NECKLACE	3	„	137.65		
	Total	25		600.20		

9. It is obvious that these seized jewellery are worn by womenfolk. The learned counsel appearing for the petitioner draws my attention to Section 14(1) of the Hindu Succession Act, 1956 which reads as follows:-

> "14. Property of a female Hindu to be her absolute property - (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."
>
> Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

10. She also relied on the decision of the Hon'ble Supreme Court reported in AIR 1985 SC 628 (Pratibha Rani V. Suraj Kumar).

11. In the light of the aforesaid statutory provision and the aforesaid decision of the Hon'ble Supreme Court, the question as to who had purchased the jewellery will pale into insignificance. Even if I assume that the sixth respondent had purchased the seized jewellery, still that will not affect the rights of the petitioner. Undoubtedly, the petitioner is the wife of the sixth respondent and that therefore, the sixth respondent obviously has the duty to maintain the petitioner. The parties are living separately for so many years and matrimonial proceedings are pending between them. I posed a specific question to the learned counsel appearing for the sixth respondent as to whether the sixth respondent has been paying any maintenance every month to the petitioner. The learned counsel stated that the sixth respondent performed the marriages of both the son and daughter. That in my view is not an answer to my question. The seized jewellery could have been put to use only by the petitioner and not by the sixth respondent. Section 14(1) of the Hindu Succession Act, 1956 makes it clear that any property possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner. Of course in Section 14(1), the expression "acquired" is also occurring. So mere possession by itself may not suffice. The female Hindu must have acquired it. But the explanation to Section 14(1) states that the property can be acquired by a female Hindu in any one of the modes set out therein. In the explanation, one comes across the expression "any

other manner whatsoever". The sixth respondent being the husband of the petitioner is obliged to maintain her and the seized jewellery can very well be considered as having been acquired by the petitioner in lieu of past maintenance. The sixth respondent did not originally assert any claim over the seized jewellery or call upon the petitioner to return the same. Therefore, I hold that the petitioner is entitled to the seized jewellery. Respondents 1 to 5 are directed to return the seized jewellery to the petitioner immediately and without any delay.

12. This Writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.S. SRIMATHY, Advocate (SR-16812[F] dated 15/09/2020)

+1 CC to M/s.L. SRINIVASAN, Advocate (SR-16811[F] dated 15/09/2020)

W.P.(MD)No.12985 of 2019
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TR(08.10.2020) 5P 3C