

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FAMILY COURT APPEAL NO.08 OF 2017

Sandip s/o Kashinath Jadhav,
Aged about 35 years,
Occupation - Nil,
R/o. 135, Mahatma Gandhi Nagar,
Hudkeshwar, Nagpur.(Ori. Respondent). .. Appellant

.. Versus ..

Sau. Kavita w/o Sandip Jadhav,
Aged about 30 years,
Occupation - Service,
R/o. Plot No.40, Renuka Mata Nagar,
Hudkeshwar Road, Nagpur.(Ori. Petitioner) .. Respondent

.....

Shri. R.P. Masurkar, Advocate for the Appellant,
Smt. Jyoti D. Dharmadhikari, Advocate for the Respondent.

.....

CORAM : A.S. CHANDURKAR AND
N.B. SURYAWANSHI, JJ.

DATED : 14th JANUARY, 2021.

JUDGMENT [PER : N.B. SURYAWANSHI, J.]

1. Appellant-husband, by this appeal filed under Section 19 of the Family Courts Act, 1984, challenges the judgment and decree passed by the Principal Judge, Family Court, Nagpur in Petition No. B-24/2013, thereby allowing the petition of wife Kavita for return of 'Stridhan'.

2. Facts, in brief, are as under :

Kavita filed petition for return of 'Stridhan' in short contending that her marriage with Sandip was solemnized on 13.02.2009 as per the Hindu Rites and Rituals. At the time of marriage, certain articles were gifted to the petitioner by her father and relatives which were carried to the matrimonial home after the marriage. All the gifted articles were carried to the house where Kavita and Sandip were residing after the marriage. Since the matrimonial life was not happy, with effect from August, 2010, Kavita and Sandip were residing separately. Kavita started residing at her parents' house and she filed two proceedings, one for maintenance under Section 125 of the Code of Criminal Procedure, wherein maintenance is granted to her and another under the Protection of Women from Domestic Violence Act, 2005, in which interim orders were passed directing Sandip to pay an amount of Rs.1,500/- per month as a rent and Rs.2,000/- as a maintenance, however, Sandip has failed to implement the orders passed under the Protection of Women from Domestic Violence Act, 2005.

3. It was further pleaded that though Kavita and Sandip separated, however, the gift articles remained with Sandip. The

articles like mangalsutra, finger ring and gold chain, other golden ornaments, wrist watch, sofa-set, diwan, washing machine, cooler, dining table and utensils were with Sandip, the list of which was annexed along with the petition. Kavita, therefore, prayed for return of the said articles.

4. Sandip appeared and resisted the claim of Kavita by filing written statement, wherein he denied all the contentions raised in Kavita's petition. He denied the list and the gift articles mentioned therein. He claimed that he was not in possession of the articles mentioned in the list annexed with Kavita's petition. He further stated that he had given golden mangalsutra, golden ear-ring, golden finger ring and silver pair patti (pajeb) to Kavita which she took away with her when she left the company of Sandip. Sandip also included list of articles which was in his possession and showed his willingness to hand over the possession of the said articles to Kavita as per the Court orders.

5. Kavita and Sandip led evidence in support of their respective contentions. Kavita filed affidavit of evidence in terms of the pleadings in her petition. She filed two bills of the golden ornaments i.e. golden ring weighing of 5.110 grams and golden

chain of 15 grams and one locket of 1.310 grams. Though the searching cross-examination was conducted, nothing damaging to the case of Kavita could be brought on record in the cross-examination. In cross-examination, Kavita stated that all her jewellery used to remain with her sister-in-law Sangita Prabhakar Gaikwad.

6. During Kavita's cross-examination, Sandip agreed to return articles which were with him. On the same day i.e. 16.9.2015, he returned some of the articles to Kavita. The returned articles were tick marked in the list Exh.21. However, since there was dispute about the remaining articles, the matter was further contested by Kavita. Kavita, however, filed pursis at Exh.29 thereby restricting her claim to only golden ornaments and giving up her claim for other gift items/articles. In further cross, Kavita stated that she did not mention in the complaint lodged with Hudkeshwar Police Station against Sandip and in-laws that Sandip retained her jewellery. She did not mention the said things in any other case filed by her. She stated that she did not file any complaint against Sangita and Sandip for retaining her jewellery. She did not file any other proceedings for recovery of jewellery. She further admitted to have received some of the Stridhan articles from Sandip on 16.09.2015.

Kavita further stated in the cross-examination that the list in question of the gift items was prepared by her brother Vijay. Subsequently added items like shalu, reception saree, gold jewellery, deity (Devache Saman) in the list were subsequently added and they were not received at the time of marriage. Kavita volunteered that subsequently added items were given on the earlier day of marriage i.e. at the time of Sakshagandha, Haldi. She further stated that while submitting the list, no other articles were added in the list Exh.21. Kavita stated that even at that point of time if she was asked to prepare the list of the gift items, she can prepare list of some gift items which she remembered. The reason not to prepare such list was that Kavita's advocate asked her to prepare list as per the old list. She also disclosed that all the persons against whom gift are mentioned of her relatives from her paternal side or friends etc.

7. Sandip neither entered the witness box nor led any evidence.

8. The learned Judge of the Family Court, after hearing the parties and assessing the evidence, decreed the petition of Kavita with costs thereby directing Sandip to return the gold chain weighing 15 grams, gold locket weighing 1.310 grams or equivalent price

thereof as on the date of judgment @ Rs.25,500/- per 10 grams to Kavita within two months from the date of judgment i.e. 31.12.2015. In-default, interest @ 12% per annum w.e.f. 01.03.2016 till realization. Sandip has challenged this judgment in the present appeal.

9. Heard the learned advocate for the appellant Sandip and the learned advocate for the respondent Kavita.

10. The learned advocate for the appellant vehemently argued that the list of the presents received by the bride and bridegroom are to be maintained in accordance with Rule 2 of the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985 (for short 'Rules of 1985'). He further submitted that there are two bills of some gold ornaments, one at Exh.22 and other at Exh.23. The name of the purchaser mentioned in both the bills is Wamanrao Gaikwad, hence the said two bills are not reliable and should not have been relied upon by the Family Court. He further stated that in terms of list at Exh.21, out of 92 items, 20 items were returned by the appellant to the respondent which includes golden ring of 5 grams, if the golden ornaments i.e. gold chain and locket were with the appellant, he would have definitely returned the same.

He further submitted that there were two lists of gold items produced on record before the Family Court i.e. list at Exh.21 is the final list and Exh.24 is the provisional list. Though there is no reliable evidence brought on record by the respondent-wife, the Family Court erroneously proceeded to decree the petition thereby directing the appellant to return the gold ornaments. He therefore submitted that the impugned judgment of the Family Court is unsustainable and the same is liable to be quashed and set aside.

11. The learned advocate for the respondent-wife, on the other hand, submitted that though the appellant returned some gift articles, taking into consideration the condition of articles which was worst, much more bad than the normal wear and tear, the respondent gave up her claim for rest of the articles, except the gold articles. A pursis to that effect was filed at Exh.29. She further submitted that the reliance placed by the appellant on Rule 2 of the Rules of 1985 is misplaced and a judicial note can be taken that in no marriage the procedure laid down in Rule 2 of Rules of 1985 is followed. She further submitted that the appellant-husband has failed to enter the witness box and to face the cross-examination. She supported the decision of the Family Court stating that the Family Court has given cogent reasoning and has rightly passed

decree in favour of respondent-wife and no case is made out by the appellant to interfere in the decision rendered by the Family Court. She, therefore, prayed for dismissal of the appeal with heavy costs.

12. Heard both the learned advocates for the parties and perused the record. After hearing rival submissions, following point arises for consideration :

“Whether the family court was justified in decreeing the petition of the respondent for return of gold ornaments.?”

13. For consideration of the submission of the learned Advocate for the appellant that since the lists at Exh.21 and 24 produced on record were not in accordance with Rules of 1985, the same were inadmissible, it is necessary to consider the relevant provision. Rule 2 of Rules of 1985 reads thus :

2. Rules in accordance with which lists of presents are to be maintained :-

- (1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.
- (2) The list of presents which are given at the time of marriage to the bridegroom shall be maintained by the bridegroom.
- (3) Every list of presents referred to in sub-rule (1) or sub-rule (2) -

- (a) shall be prepared at the time of the marriage or as soon as possible after the marriage,
- (b) shall be in writing,
- (c) shall contain -
 - (i) a brief description of each present;
 - (ii) the approximate value of the present;
 - (iii) the name of the person who has given the present; and
 - (iv) where the person giving the present is related to the bride or bridegroom a description of such relationship;
- (d) shall be signed by both the bride and the bridegroom.

Explanation 1. - Where the bride is unable to sign, she may affix her thumb impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

14. There cannot be any dispute that the provision of Rule 2 needs to be followed, but non following of this Rule by itself would not render the list at Exh.21 and 24 filed on record inadmissible. In view of Section 14 of the Family Courts Act, 1984 which reads thus :

“14. Application of Indian Evidence Act, 1872 – A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a

dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

Thus, the Family Court is entitled to receive documents that may in its opinion assist it to deal effectually with a dispute irrespective of the fact that the same may or may not be otherwise relevant or admissible under the Indian Evidence Act. In the facts of the present case, since the Family Court was of the opinion that the lists of gift at Exh.21 and Exh.24 would assist it to effectually deal with the dispute, it has rightly placed reliance on the said two lists.

15. On going through the evidence placed on record, it is clear that the evidence of respondent Kavita could not be shattered in the cross-examination. We do not find any substance in the argument of learned advocate for the appellant that two bills at Exh.22 and Exh.23 are of the same ornaments. Exh.22 is the bill dated 20.08.2008 issued by goldsmith Parekh Tribhuvandas Jivanbhai Jewellers in respect of ring weighing 5.110 grams, whereas bill at Exh.23 dated 14.11.2008 is issued by goldsmith Arti Jewellers in respect of gold chain weighing of 15 grams and gold locket of 1.310 grams. Though in the written statement appellant had denied a possessing the gold ring and other golden ornaments, admittedly

he has returned the gold ring to the respondent on 16.9.2015, but he did not return the gold locket and gold chain which were mentioned in bill Exh.23. The bills Exhs.22 and 23 are in the name of Wamanrao Gaikwad, the father of the respondent. The bill Exh.23 also falsifies the claim of appellant that appellant had presented those gold articles to the respondent. Thus the respondent had proved her case by producing the bills Exhs.22 and 23. The appellant has failed to rebut the evidence of the respondent that soon after the marriage, appellant's sister Sangita Prakash Gaikwad retained her jewellery. Undisputedly, appellant's sister Sangita was residing with the appellant at the time of his marriage with the respondent. The appellant, for the reasons best known to him, has chosen not to enter the witness box. He also failed to examine his sister Sangita to rebut the evidence of the respondent that his sister had retained gold ornaments. In this view of the matter, the respondent has proved her case by leading cogent evidence and the learned Family Court, by a reasoned order, has decreed the petition filed by the respondent. A possible view of the matter on rational basis and by applying preponderance of probabilities has been taken by the Family Court and we do not find any other material on record to displace the findings of fact recorded by the Family Court in favour of respondent-wife. As a result of aforesaid discussion, we find that

the impugned judgment of the Family Court deserves to be confirmed without any modification. We, therefore, answer the point accordingly.

16. We do not find any merit in the appeal filed by the appellant. For the aforesaid reasons, we pass the following order :

ORDER

- 1) The appeal stands dismissed.
- 2) The appellant is granted four weeks time to comply with the direction of returning the gold ornaments from today. If this direction is not complied with, the judgment of the Family Court dated 31.12.2015 shall become operative and the respondent would be free to execute the same. The value of the gold ornaments, if deposited before the Family Court, shall be permitted to be withdrawn by the respondent.
- 3) Pending civil applications are disposed of.

(N.B. Suryawanshi, J.)

(A.S. Chandurkar, J.)