



SA(MD)No.730 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/03/2025

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CORAM

The Hon'ble Mr.Justice **G.ILANGOVA**

SA(MD)No.730 of 2009

K.Singaravelu

: Appellant/Appellant/
Defendant

Vs.

Kalaiselvi,
rep. by her Sister and next
friend S.Nirmala
(Substituted the Guardian and
next friend of the respondent,
vide Court order, dated 24/01/2020
made in CMP(MD)No.5620 of 2019
in SA(MD)No.730 of 2009)

: Respondent/Respondent/
Plaintiff

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed in AS No.49 of 2007 on the file of the Principal District Court, Thanjavur, dated 28/02/2008, confirming the decree and judgment passed in OS No.149 of 2004 on the file of the District Munsif Court, Thanjavur, dated 14/06/2006.

For Appellant : Mr.M.R.S.Prabhu

For Respondent : Mr.N.Tamil Mani



SA(MD)No.730 of 2009

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This Second Appeal is filed against the decree and judgment passed in AS No.49 of 2007 by the Principal District Court, Thanjavur, dated 28/02/2008, confirming the decree and judgment, dated 14/06/2006 passed in OS No.149 of 2004 by the District Munsif Court, Thanjavur.

2.The averments in the plaint in brief:-

(i)The marriage between the plaintiff and the defendant was performed on 10/12/1986 as per their religious rites. For 3 weeks only, they were living together. On 07/01/1987, she was taken by the defendant to her parental home, living there promising to take her back after some-time. At that time, the defendant and his parents removed all the jewellery stating that it will be kept in the Bank locker. Later, the defendant filed a suit in OP No.110 of 1987 on the file of the Sub Court, Thanjavur. That application was allowed, on 16/11/1988. Against which, CMA No.21 of 1989 was filed on the file of the Principal District Court, Thanjavur West. It was allowed on 05/11/1992. Against which, the defendant filed appeal before the High Court of Madras in A.A.A.O No.35 of 1993. The High Court, by order, dated 26/02/1997 restored the order of the trial court. Now the order has become final. Later, the defendant initiated proceedings



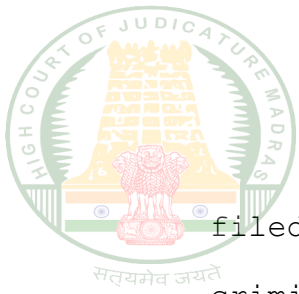
SA(MD)No.730 of 2009

WEB COPY

for annulment of marriage stating that the plaintiff is suffering from mental illness. That petition was allowed and the marriage between the parties was annulled.

(ii)At that time of marriage, the plaintiff was presented with ornaments and other articles mentioned in the schedule. The account was maintained by the father of the plaintiff. The property was in the custody of the defendant. It was mentioned in the earlier proceedings also. After getting the decree of nullity of marriage, the defendant has no right to retain the articles. So, they are bound to return the same. By notice, dated 17/02/1999, the defendant was required to return the jewellery and articles. But so far, it was not complied by the defendant. Hence, the suit.

3. The statement:- The suit framed as such is not maintainable. It was already decided in OP No.110 of 1987 that the plaintiff is a mentally ill-patient. Without mentioning the same, the suit is filed, which is not maintainable. Right from the beginning, the father of the plaintiff was not behaving properly. Suppressing the mental capacity of the plaintiff, he arranged marriage. Even after that issue, a false complaint was given, which was registered in Crime No.861 of 1988. Criminal case was



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SA(MD)No.730 of 2009

filed in CC No.677 of 1988. After 2-1/2 years, that criminal case ended in acquittal. So, in that criminal case itself, the plaintiff's father admitted that the plaintiff returned to house with Tali and earrings. The plaintiff took all the jewellery at the time of leaving the house. After a lapse of 12 years, the suit is filed. Even at the time of enquiry, the defendant gave a list containing 41 items stating that he is ready to return the articles. Along with the written statement, they have annexed a list containing the articles in the custody of the defendant. He is ready to return the articles to the plaintiff as per the order of the court. The suit is barred by limitation and prayed for dismissal of the suit.

4. Based upon the pleadings of both sides, the trial court has formulated the following issues:-

(1) Whether the plaintiff's father presented the gold ornaments and the articles mentioned in the plaint to the defendant at the time of marriage?

(2) Whether the suit is maintainable or not as the suit has been filed by the plaintiff without the help of the guardian?



WEB COPY

SA(MD)No.730 of 2009



(3)Whether the suit claim is barred by limitation?

(4)Whether the defendant has kept only the properties mentioned in the written statement or not?

(5)To what other reliefs, the plaintiff is entitled to?

5.Before the trial court, the plaintiff's father was examined as PW1 and marked 7 documents as Exs.A1 to A7. On the side of the defendant, the defendant was examined as DW1 and marked 2 documents as Exs.B1 and B2.

6.At the conclusion of the trial process, the trial court decreed the suit as prayed with costs. Against which, appeal was preferred in AS No.49 of 2007 before the Principal District Judge, Thanjavur and the appeal was dismissed concurring with the decree and judgment of the trial court.

7.Against which, this second appeal is preferred by the appellant.

8.At the time of admission, the following substantial question of law was framed:-



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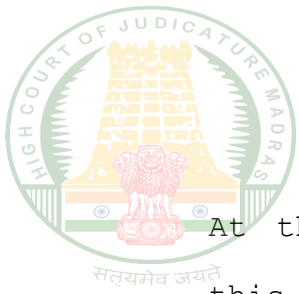
SA(MD)No.730 of 2009



Whether the conclusion reached by the Courts below that the defendant was bound to return the gold ornaments mentioned in 'A' schedule is based on no evidence?

9.Heard both sides.

10.The matrimonial dispute between the plaintiff and the defendant culminating the decree of nullity granted in favour of the defendant against the plaintiff passed by this court in AAAO No.35 of 1993, dated 26/02/1997. It is very unfortunate to note that even says the marriage that was performed between the parties on 10/12/1986 was annulled by the above said judgment, but still the matter has not come to an end in a conclusive manner. This is the third litigation between the parties. First one is the decree of nullity. Second one is the criminal case registered against the husband under the provisions of IPC. The action initiated by the husband ended in his favour. The action initiated by the wife in a criminal complaint ended in favour of the husband. In both matters, he succeeded. This the third litigation started for the return of the articles, jewellery, etc., Both the courts namely the trial court as well as the appellate court granted decree as prayed for against the husband.



SA(MD)No.730 of 2009

WEB COPY

At the second appellate stage, an attempt was made by this court to resolve the issue to the extent possible. The matter was referred to the mediation. But there was no settlement between the parties due to difference of opinion regarding the return of jewellery.

11.It is the consistent case of the plaintiff that the jewellery mentioned in the plaint 'A' schedule, which was quantified to the money value at **Rs.56,277.50/-** were retained by the appellant herein when she was taken to her parental home. Whether this appellant took the plaintiff to her parental home, left there promising to take her back is true or not is beyond the scope of this matter. I am not entering into that issue.

12.Consistently, a stand has been taken by the appellant that the jewellery were never retained by them and they did not even know the items jewellery presented to the plaintiff.

13.But *prima facie*, it is seen that such a contention on the part of the appellant is not tenable. It is a customary practise of the parents to present the jewellery to the bride at the time of marriage. So, there cannot be no total denial on that aspect. But at

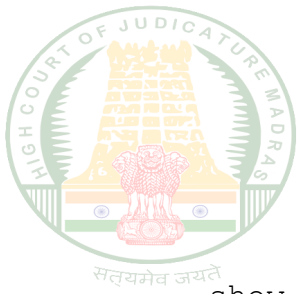


SA(MD)No.730 of 2009

WEB COPY

one stage, the appellant would say that when the plaintiff left the matrimonial home, she took all her jewellery along with her. But this itself is not acceptable for the simple reason that while filing the counter in OP No.110 of 1987, the details of the jewellery and other articles presented at the time of marriage were furnished. But perusal of the records in OP No.110 of 1987 does not indicate any denial statement filed by this appellant. Further, it is seen that no discussion was made in this regard in that matter. The appellant has not even produced the deposition copies in that matter as to see whether any specific denial was made by this appellant in the matrimonial proceedings. Only for the first time, by issuing reply notice to the plaintiff, which was given for return of the article, it has been stated that no such articles were available with the appellant. So, this is the preliminary point, which is available against the case of the plaintiff.

14.Now it has been contended by the appellant that absolutely, no evidence was let in by the plaintiff to show that the articles mentioned in the plaint were retained by the appellant herein and no evidence was available to show that these jewellery were presented to the plaintiff at the time of marriage.



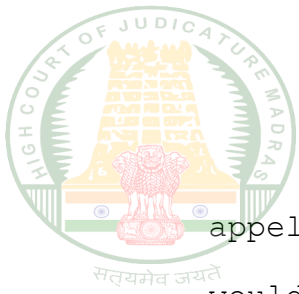
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SA(MD)No.730 of 2009

15.No doubt that there is no evidence on record to show that the jewellery, which are mentioned in the plaint were gifted to the bride namely the plaintiff at the time of marriage. But we cannot expect any documentary evidence in this regard. It is the customary practise for the parents of the bride to present the jewellery at the time of marriage. Except in rare, there is no practice, either to get acknowledgment of the presentation of the jewellery or to work out a list of presentation. This omission on the part of the plaintiff's parents neither in making which was contemporaneous in nature or acknowledgment of presentation cannot be taken advantage by the appellant.

16.As mentioned above, in the counter statement itself the items are mentioned stating that they are retained by the appellant. In the absence of any specific denial, then it will amount to admission. Absolutely, there is no evidence on record to show that the plaintiff took all the jewellery at the time of leaving the house. We cannot accept that the bride to take the jewellery along with her when she left the house due to some matrimonial issue. When such case of this nature requires application of theory of preponderance of probability, only on that account, the trial court as well as the

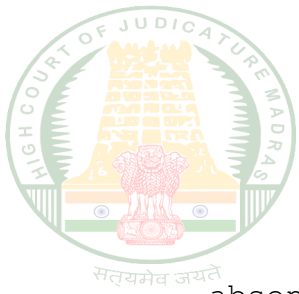


SA(MD)No.730 of 2009

WEB COPY

appellate court recorded a finding. But the appellant would rely upon the evidence of the father of the plaintiff in the criminal case, which is marked as Ex.B2 in CC No.677 of 1988.

17. But the evidence or deposition of a living person cannot be admitted in evidence, unless that person is called as witness. PW1 is the father of the plaintiff. He was examined on the side of the plaintiff. Being the father, he is competent to speak about affair, even though strong exception was taken by the appellant for the non-examination of the plaintiff. As stated above, it is the case of the appellant that the plaintiff is a mentally ill-person. When that is being so, the question of examination of the plaintiff does not arise and her non-examination will not improve his case. If at all, Ex.B2 ought to have been brought to his notice and if there is any admission of his evidence, then that can be taken into account or if PW1 denies a particular portion of the evidence, it might have been marked as contradiction. This process was not followed. Simply it was marked on the side of the defendant namely the appellant herein. The evidentiary value of Ex.B1 cannot be taken into account and it has to be discarded from our discussion.

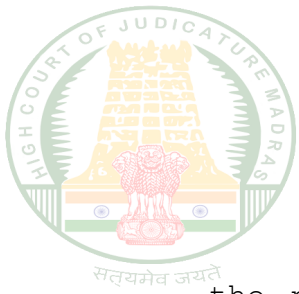


SA(MD)No.730 of 2009

WEB COPY

18.Now coming to the question of admission due to absence of specific denial in the earlier proceedings, it must be construed only as implied admission. So, this position can also be verified from the argument advanced by the appellant before the appellate court. It was argued by the appellant before the appellate court that in CC No.687 of 1988 PW1 namely the father of the plaintiff has admitted that the plaintiff came to the house with the earrings and Tali and chain; This admission on the part of the plaintiff's father will show that the jewellery was not retained by the defendant, but was taken by the plaintiff herself. But the evidentiary value of Ex.B2 has been rejected by me. Even if we consider that the father of the plaintiff has given such evidence in the criminal case, the case of the appellant does not improve. What he has admitted is only earrings, tali and chain and not the other jewellery.

19.Another argument was that one Laxmi Narayanan, who is witness in CC No.677 of 1988 the brother-in-law, the father of the plaintiff, has stated in his chief examination that the plaintiff came to the house on 07/01/1987 with a pair of bangles.



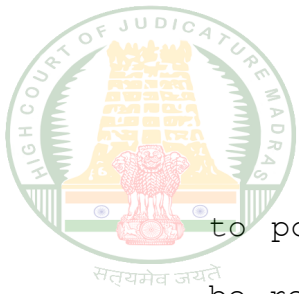
WEB COPY



SA(MD)No.730 of 2009

20. Even if we consider for the argument sake that the plaintiff returned to the house of her parents with earrings and tali and chain and bangles, what happened to the remaining jewellery, there is no explanation even by their own argument. So, in all probabilities, some of the jewellery might have been retained by the appellant/plaintiff leaving the plaintiff to leave the house with tali, earrings, bangles.

21. We can also verify the above said finding, in the light of the list given in the plaint. 4th item is mentioned as Red Stone earring 1 pair. 8th item is mentioned as earring. 5th item is mentioned as Vaalai Poo Chain. The same is repeated as 9th item. There is overlapping in the items when we compare and deduct the above Vaalai Poo Chain, earring articles. So, the repetition of the Vaalai Poo Chain makes very difficult in assessing the correct jewellery taken by the plaintiff of her person and the jewellery retained by the defendant. This was put as clarification to the learned counsel for the respondent. But no acceptable explanation came. This was not properly appreciated at the time of trial. Even at the time of judgement by the trial court as well as by the appellate court. We have to necessarily deduct some of the items. Which item has to be deducted due to the absence of the clear evidence on record, I am unable



SA(MD)No.730 of 2009

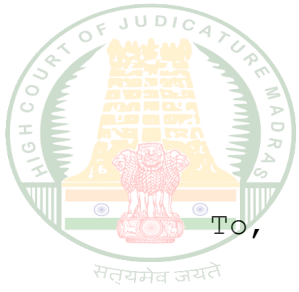
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to point out. But some deletion can be made, which must be reasonable. I am of the considered view that the total 15 sovereigns or its equivalent money value calculated on the date of the plaint may be ordered to be returned or paid in cash. In fact, at the time of argument, the respondent has submitted that during the course of mediation process, they wanted to reduce the items. But that was not accepted by the appellant. Now whatever it may be, I am of the considered view that 15 sovereigns of gold jewel or its equivalent to 120 grams or its value in money must be returned by the appellant. To that effect, the decree and judgment of the trial court is modified.

22. With the above said modification, this second appeal is **dismissed** without any costs.

21/03/2025

Index: Yes/No
Internet: Yes/No
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SA(MD)No.730 of 2009

To,

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- 1.The Principal District Judge,
Thanjavur.
- 2.The District Munsif,
Thajavur.
- 3.The Section Officers,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD)No.730 of 2009

G.ILANGOVAN, J

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SA(MD)No.730 of 2009

21/03/2025