

(2009) 09 KL CK 0078

High Court Of Kerala

Case No: Matrimonial Appeal. No. 643 of 2007

Thomas @ Shaji and
Aleykutty

APPELLANT

Vs

Annamma @ Jayarani

RESPONDENT

Date of Decision: Sept. 7, 2009

Acts Referred:

- Evidence Act, 1872 - Section 3
- Family Courts (Procedure) Rules, 1989 - Rule 10

Hon'ble Judges: R. Basant, J; M.C. Hari Rani, J

Bench: Division Bench

Advocate: Tom Jose Padinjarekara, for the Appellant; Shaji Thomas Porkkattil, for the Respondent

Final Decision: Dismissed

Judgement

R. Basant, J.

In this appeal, the appellants - husband and mother in law of the respondent, assail the order passed by the Family Court directing them to return an amount of Rs. 1.5 lakhs along with interest and cost and to return 3 sovereigns of gold ornament or Rs. 18,000/- along with interest. Interest has been directed on both amounts @ 6% per annum.

2. That the 1st appellant and the respondent were married to each other is admitted. Before us it is not disputed that the betrothal took place on 30.05.2005. The marriage took place on 06.06.05. Admittedly the spouses lived together for a very short period of 11 days and started separate residence thereafter. On 07.01.2006, the wife went before the Family Court with this claim for return of Rs. 1.5 lakhs and an ornament weighing 3 sovereigns or its value. It is further admitted that there has been a subsequent exparte decree granting divorce dated 23.07.09 dissolving the marriage between the parties. The impugned order was passed

earlier on 13.09.07.

3. The claimant/wife asserted that an amount of Rs. 2.5 lakhs had been handed over on the date of the betrothal, ie. on 30.05.05, to the appellants. She further contended that a gold ornament weighing 3 sovereign was put on the 1st appellant/husband by the mother of the wife on the date of the marriage. Out of the amount of Rs. 2.5 lakhs, the wife admitted that Rs. 1 lakh had been spent for purchase of gold ornaments for her. She claimed return of the balance amount of Rs. 1.5 lakhs as also the gold ornament (value thereof) which was allegedly handed over to the husband.

4. The appellants resisted the claim. They admitted that the amount was handed over on the date of the betrothal. But according to them, only an amount of Rs. 1.5 lakhs was handed over on the date of the betrothal. They did not specifically deny the fact that a gold ornament was handed over to the husband by the mother in law on the date of the marriage. The dispute that was raised thus was as to the precise amount that was handed over at the time of betrothal. The appellants contended that only an amount of Rs. 1.5 lakhs had been handed over and according to them the entire amount of Rs. 1.5 lakhs had been spent for purchasing ornaments etc. for the claimant/wife. No amount was hence returnable to the claimant, it was contended.

5. Parties went to trial on these contentions. The claimant/wife examined herself as PW1. Her mother was examined as PW2. A witness to the handing over of the amounts and the handing over of the gold ornament - a relative of PWs 1 and 2, was examined as PW3. Exts.A1 to A4 were marked. Ext.A1 is the marriage certificate. There is no dispute about the marriage. Ext.A2 is the photograph along with negative taken when PW2 handed over a gold ornament to the 1st appellant/husband. Ext.A3 is a certificate to show that amounts were available with the claimant/wife/her relatives to probabalise the theory of entrustment of the amount. Ext.A4 was produced to show that there was a bank locker for the claimant/wife and the same was operated on 30.05.09. On the side of the appellants, the 2nd appellant was examined as RW1 and the 1st appellant was examined as RW3. A relative of theirs was examined as RW2. No documents were produced on their side.

6. Called upon to choose between the rival sets of interested testimony, the court below came to the conclusion that it was safe to place reliance on the oral evidence of PWs 1 to 3. Accordingly the learned Judge of the Family Court proceeded to pass the impugned order.

7. Before us, the learned Counsel for the appellants and the learned Counsel for the respondent have advanced their arguments. The learned Counsel for the appellants assails the impugned order on the following grounds.

(i) The impugned order is bad inasmuch as there is violation of Rule 10 of the Family Court (Procedure) Rules.

(ii) The court below erred in accepting and acting upon the oral evidence of PWs 1 to 3 to conclude that a gold ornament weighing 3 sovereigns was handed over to the 1st appellant by the claimant and her mother.

(iii) The court below erred in blindly accepting the oral evidence of PWs 1 to 3 that it was an amount of Rs. 2.5 lakhs and not an amount of Rs. 1.5 lakhs that was handed over by the claimant and her mother to the appellants on 30.05.05.

8. So far as the challenge on ground No. (i) is concerned, we are satisfied that there has been an infraction of Rule 10 of the Family Court (Procedure) Rules. The inadequacy alleged is that the period prescribed for appeals has not been shown on the copy of the judgment. This inadequacy does not in any way affect the validity of the impugned order and we are in these circumstances satisfied that the challenge on this ground cannot in any way help the appellants.

9. So far as grounds (ii) and (iii) are concerned, the question is whether the court below erred in choosing to accept and act upon the oral evidence of PWs 1 to 3 in preference to that of RWs 1 to 3. This is the short question to be considered.

10. The oral evidence of PWs 1 to 3 as also the admissions of RWs 1 and 3 clearly show that a gold ornament was handed over to the husband by his mother in law on the date of the marriage. Ext.A2 photograph along with negative clinchingly proves this fact. There is no contention that the gold ornament did not weigh 3 sovereigns. There is no contention that such a gold ornament was not handed over. There is no contention that the gold ornament had been returned. In these circumstances, finding of the court below on this aspect does not in any way warrant interference.

11. The next question to be decided is whether the court below erred in choosing to accept the oral evidence of PWs 1 to 3 that it was an amount of Rs. 2.5 lakhs and not an amount of Rs. 1.5 lakhs that was handed over to the bridegroom on the date of the betrothal. The court below was obliged to evaluate, consider, sieve and weigh the evidence of PWs 1 to 3 as against the oral evidence of RWs 1 to 3. The totality of relevant inputs convincingly point to the acceptability of the course adopted by the court below in choosing to accept and act upon the oral evidence of PWs 1 to 3. The onus on the court was to choose between two sets of interested testimony. On the touch stone of probabilities and possibilities, adopting the yardstick of a prudent person as demanded by Section 3 of the Evidence Act, we have no hesitation to agree that the court below has committed no error warranting appellate interference in choosing to accept and act upon the oral evidence of PWs 1 to 3. We are not persuaded to interfere with that discretion of the trial court, which had the evident advantage of seeing the witnesses perform in the witness box before it. On broad probabilities also, it is idle to assume that the entire amount paid on the date of betrothal was used up for purchase of gold ornaments and articles for the wife.

At any rate, we are not persuaded to invoke our appellate jurisdiction to interfere with the cogent, reasonable and probable approach made by the court below.

12. No other contentions are raised. We are satisfied that the appeal does not deserve to be allowed.

13. In the result:

a) This Appeal is dismissed;

b) The impugned order is upheld;

c) The appellants are directed to pay the cost of the respondent in this appeal.