(1952) 03 MP CK 0001

Madhya Pradesh High Court (Gwalior Bench)

Case No: Appeal No"s. 85 and 88 of 2004

Khubchand		APPELLANT
	Vs	
Maniklal		RESPONDENT

Date of Decision: March 7, 1952

Acts Referred:

- Contract Act, 1872 - Section 65
- Limitation Act, 1908 - Article 11, 113, 115, 13, 49

Hon'ble Judges: Shinde, J; Dixit, J

Bench: Division Bench

Advocate: Bhagwanswaroop and Premnarayan, for the Appellant; Bhagwandas and Motilal Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Shinde, J.

These two appeals arise out of the suit filed by Pyarchand against Khubchand for damages. The Plaintiff alleges in his plaint that the Defendant entered into a contract with him to give his daughter Mulibai in marriage to the Plaintiff"s son Manaklal on 5-2-1932; that the Defendant married his daughter to one Chothmal on 17-1-1939 and thus broke the contract; that in pursuance of the contract, the Plaintiff on the occasion of betrothal, spent Rs. 860/- in giving presents of ornaments and clothes to the daughter of the Defendant; that he, as a result of the Defendant"s action, sustained mental hardship and loss of reputation. On these allegations, the Plaintiff claimed Rs. 860/- as special damages and Rs. 1200/- general damages from the Defendant. The Defendant admitted the contract of marriage and also the fact of marrying his daughter to Chothmal on 17-1-1939, but pleaded that the contract was broken by the Plaintiff. He stated in his written statement that the contract between the parties was that Mulibai was to be married to the son of the Plaintiff as his first wife.

But the Plaintiff in breach of this contract married his son to the daughter of Kaluram in May, 1935. He further stated that he incurred an expenditure of Rs. 700/- at the, time of betrothal and also suffered mental worry which he estimated at Rs. 1000/-. On these allegations he prayed that the Plaintiff''s suit be dismissed and the claim for Rs. 1700/- for damages be decreed against the Plaintiff. The City Sub-Judge, Ujjain, dismissed both the Plaintiff''s suit and the Defendant''s counter claim. The Plaintiff filed an appeal and the Defendant filed cross-objections. The learned District Judge, Ujjain, decreed the Plaintiff''s suit to the extent of Rs. 800/- and dismissed the cross-objections of the Defendant. Against this judgment and decree both the parties have filed these appeals.

2. The Plaintiff''s appeal is confined only to the return of the ornaments or their market price at the time of the decree. The Defendant''s appeal on the other hand, is for reversing the decree of the District Court for Rs. 800/- passed in favour of the Plaintiff and for decreeing the claim of the Defendant for Rs. 1700/-.

3. A preliminary objection has been raised by Mr. Bhagwandas Gupta counsel for the Plaintiff that the counter claim of the Defendant is time barred. He contends that if Plaintiff broke the contract, cause of action accrued to the Defendant in May, 1935. The counter claim was filed on 1-5-39. As the Article 5 or 11 of the Gwalior Limitation Act equivalent to Article 49 or 113 of the Indian Limitation Act applies, the period of limitation being 3 years, the claim is time barred.

4. Conceding for the sake of argument that the cause of action accrued to the Defendant in May 1935 we have to consider whether Article 5 or 11 of the Gwalior Limitation Act, which is equivalent to Article 49 or 113 of the Indian Limitation Act, covers this case or not. (After quoting Article 5, Gwalior Limitation Act in Hindi, the judgment proceeds:)

Article 49 of the Indian Limitation Act reads as follows:

Three years.	

The wording of Article 49 clearly indicates that the Article is attracted only when specific moveable property or compensation is asked for. The suit as it is framed is not for return of ornaments. The plaint clearly states: that the suit is for damages for breach of contract. The written statement filed by the Defendant clearly states in para No. 13 that the breach of contract by the Plaintiff caused the Defendant Rs. 700/- special damages and Rs. 1000/- general damages. The statements made both in the plaint: and in the written statement make it abundantly clear that the suit is not for the return of the ornaments but for damages caused by the breach of the contract, in these circumstances Article 49 is not attracted in this case.

5. The learned Counsel for the Plaintiff further contends that if Article 5 of the Gwalior Limitation Act is not attracted, Article 11 of the Gwalior Limitation Act is applicable to this

case. Article 11 of the Gwalior Limitation Act is as follows:

(After quoting Article 11 in Hindi, the judgment proceeds:) The parallel Article in Indian Limitation Act is Article 113 which reads as follows:

For specific performance of a contract.	Three years.	

As already stated the suit is for damages for breach of contract. Hence Article 11, which covers a suit brought for specific performance, cannot be made applicable to the case under consideration. Hence even this Article is not applicable to the present case.

6. The suit as it is framed no doubt attracts Article 115, Indian Limitation Act. This Article reads as follows:

[illegible]	Three years.	

There is no need, however, to enter into a further discussion as to whether Article 115, Indian Limitation Act, is applicable to the present suit or not. There is no Article in Gwalior. Limitation Act analogous to Article 115, Indian Limitation Act. Consequently, the omnibus Article 13, Gwalior Limitation Act, has to be applied to this case. As this Article prescribes six years as the period of limitation, the suit is clearly within time. The preliminary objection, therefore, has no force.

7. Turning now to the consideration of the main points raised in the case the first point to consider is who broke the contract. Before proceeding to consider that question, it may be mentioned that it is now well established that the suit for damages for breach of promise of marriage is entertainable. In Kr. Rajendra Bahadur Singh Vs. Kr. Roshan Singh and Another, , their Lordships of the Allahabad High Court held that in a Hindu family betrothal is in the nature of a contract to which the Contract Act is applicable. In Mayne''s Hindu Law, it is stated that where the marriage contract is entered into on behalf of the minors, courts have generally awarded damages for breach of contract. (Vide Mayne''s Hindu Law and Usage 1950 Edn.137). In ''Khimji Kuverji v. Lalji Karamsi ILR (1941) Bom. 211 their Lordships of the Bombay High Court held that a suit for damages for breach of promise of marriage is entertainable. In ''Umed Kika v. Nagindas Narotamdas'', their Lordships of the Bombay High Court allowed damages to the bridegroom against the father of the bride for breach of promise. Vide 7 Bom. H.C. (O.C.) 122. In ''Mulji Thakarsey v. Gomti'' 11 Bom 412 their Lordships of the Bombay High Court gave damages to the bridegroom for breach of promise of marriage. The same view was followed in ''Purshotamdas Tribhovandas v. Purshotamdas Mangaldas 21 Bom 23. It is, therefore, now well settled that a suit for damages for breach of promise of marriage is entertainable.

8. That brings us to the consideration of the breach of promise. The learned Counsel for the Defendant contends that the contract was broken by the Plaintiff when he married his son to the daughter of Kaluram in May 1935. That Manaklal married the daughter of Kaluram in May, 1935 is admitted by both the parties. The Plaintiff, however, states that his wife having been burnt she was unable to attend to household work and hence he needed a daughter-in-law, to look after his house.

When he approached the Defendant he refused to marry his daughter until she was 16 years old. Hence he married his son to the daughter of Kaluram. Mangilal, who is the son of the Plaintiff Pyrachand, also, testifies to this fact. This fact is also mentioned in the reply dated 19-12-1938 to the notice dated 7-12-1938. It also appears from the notice given by Khubchand to the Plaintiff dated 18-12-1938, that Mulibai was on that date about 14 years old. The Plaintiff applied for permission as both his son and Kaluram''s daughter had not attained the requisite age. At that time, Khubchand Defendant objected to the permission being given to the Plaintiff. If he wanted to marry his daughter, there is no reason why permission may not have been sought for Mulibai as she could not have been less than 10 at that time. This fact goes to prove Plaintiff''s allegation that in 1935 the Defendant was not willing to marry his daughter to the Plaintiff''s son. There is no evidence to show that the contract between the parties was that Mulibai was to be married at a particular age. Consequently, if the Defendant had been willing to marry his daughter in 1935 he would have applied for permission for his daughter. In any case, there is no evidence on record to show that the contract between the parties was that Mulibai was to be Maniklal''s first wife and not the second one. Even after Maniklal was married to Kaluram''s daughter, the Plaintiff sent a telegram on 6-5-36 to the Defendant as under:

Under instructions of Pyarchand of Firm Chhajuram Mangiram you betrothed your daughter Mulibai with Pyarchand''s son Maniklal you are going to betrothe her again with Bherubua''s son take notice that your action would result in breach of contract for marriage you responsible for damages and consequences.

Ramprasad Bhargava
Vakil

This telegram shows that the Plaintiff was willing to carry out the contract. But the Defendant married Mulibai to Chotumal son of Fattaji resident of Badod on 17-1-1939. In Hindu Law there is no restriction on a husband to marry more than one wife. In the absence of a contract that Mulibai was to be the first wife of Maniklal, it cannot be said that the Plaintiff, who was willing to marry his son to Mulibai broke the contract. In these circumstances there is no doubt in my mind that the contract was broken by the Defendant.

9. The next contention raised by the Defendant is that the ornaments for which the decree had been given by the lower Court were given by the Plaintiff as gift and hence neither

ornaments nor their price can be claimed by, the Plaintiff. This contention also cannot be sustained. It has been held in a number of cases that when a contract of marriage is broken a person is entitled to the return of jewellery from the person who breaks the contract. The gifts made on the occasion of the various ceremonies preceding the marriage are not absolute gifts. Such gifts are made in anticipation of and as consideration for the proposed marriage. Vide Kr. Rajendra Bahadur Singh Vs. Kr. Roshan Singh and Another, . Gooroo Dass Banerjee in the Hindu Law of Marriage and Stridhan (Tagore Law Lectures, 1878) at page 92 states as follows:

But though specific performance cannot be enforced the party injured by the breach of a contract of betrothal is entitled to recover compensation for any pecuniary damages that might have been sustained, and also for any injury to character or prospects in life which may naturally arise in the usual course of things from such breach.

In "Mulji Thakarsi v. Gomti 11 Bom 412 it was held that the Plaintiff was entitled to the return of the ornaments as the Defendant had committed the breach of promise. In "Rambhat v. Timmayya" 16 Bom. 673 their Lordships of the Bombay High Court held that the Plaintiff is entitled to the return of ornaments. The same view was taken in "Umed Kika v. Nagindas 7 Bom. H.C. 122. In these circumstances there is no force in the contention that ornaments given at the time of betrothal or on the occasion of various ceremonies preceding the marriage are absolute gifts.

10. The next point raised by the counsel for the Defendant is that he has received no benefit from the Plaintiff and if any ornaments and clothes were given to Mulibai she has taken them away with her, as she is now out of his control, he is not liable to return them or pay any compensation. This argument though specious is devoid of any force. It is admitted that the ornaments were given when Mulibai was a minor living in the guardianship of the Defendant. Teharir dated 6-1-1935 gives the description of the ornaments, given by the Plaintiff and states that after the marraige Mulibai will take those ornaments with her to the Plaintiff"s house. Besides although the weight and price have been disputed by the Defendant, he had admitted the receipt of the ornaments in para No. 3 of his written statement. Above all Khubchand in his statement admits that the ornaments given to Mulibai by the Plaintiff are with him. Under these circumstances this argument is not tenable.

11. Turning now to the claim made by the Defendant against the Plaintiff it may be said at the outset that he is not entitled to get general damages as he himself was responsible for breaking the contract. The question is whether he is entitled to the return of ornaments or their price, u/s 65, Contract Act. The Defendant states that he gave the ornaments worth Rs. 600/- at the time of betrothal. The first appellate Court held that there is no sufficient evidence to hold that the Defendant gave ornaments and clothes worth Rs. 600/- to the Plaintiff. We see no reason to differ from the view taken by the lower Court. There is no reliable evidence to show that clothes and ornaments worth Rs. 600/- were given by the Defendant to the Plaintiff. The Defendant has also asked to be reimbursed

for the expenses incurred for dinner etc. On that count he claims Rs. 100/-. As already stated he is not entitled to damages on that count as he himself is guilty of breaking the contract. The result is that the Defendant''s claim for Rs. 1700/- cannot be allowed.

12. The Plaintiff has filed an appeal for the return of his ornaments in specie or their market price at the time of the decree. This relief cannot be granted. In his plaint the Plaintiff specifically prayed for Rs. 800/- as price of the ornaments and Rs. 60/- as price of clothes and Rs. 1200/- as general damages. In his praver he states clearly that the decree for Rs. 2060/- be given against the Defendant if the Defendant returns the ornaments specified in para 3 of the plaint Rs. 800/- be deducted from the suit claim of Rs. 2060/-. In these circumstances the Plaintiff now cannot be allowed to claim either the ornaments in specie or their market price at the time of the decree.

13. For the reasons given above both the appeals are dismissed with costs.

P.V. Dixit, J.

14. I agree.