
Before G.S. Singhvi & Ajay Kumar Mittal, JJ

DR. MRS. SURAJ PARKASH,—*Appellant*

versus

MOHINDER PAL SHARMA,—*Respondent*

L.P.A. No. 1168 of 1987

13th December, 2004

Hindu Marriage Act, 1955—Ss. 10 & 27—During the pendency of petition u/s 10 wife filing application u/s 27 for return of dowry articles—Trial Court allowing wife's petition u/s 10 and thereafter separately deciding the application u/s 27—Trial Court directing husband to return certain articles lying with him—Wife's prayer for return of jewellery declined—Ld. Single Judge holding that the trial Court has no jurisdiction to separately decide the application u/s 27 but declined to interfere with the order of trial Court passed in that applicaiton—Whether application u/s 27 filed for return of jewellery in the proceedings u/s 10 of the Act is maintainable—Held, yes—However, keeping in view the facts wife awarded a sum of Rs. 20,000 instead of Rs. 50,000 on account of jewellery to be paid by the husband.

Held, that a careful analysis of the provisions of Section 27 of the Act leads to an irresistible conclusion that in any proceeding under the Act, the Court may, while passing a decree, make provision with respect to any property presented at or about the time of marriage which may belong jointly to both the husband and wife.

(Para 9)

Further held, that the proposition of law laid down in Balakrishna Ramchandra Kadam vs. Sangeeta Balrishna Kadam, JT 1997(7) S.C. 742 is squarely applicable to the case. Therefore, the order of the learned Single Judge holding that the application filed u/s 27 of the Act should have been disposed of along with the main petition filed by the appellant u/s 10 and that the learned Addl. District Judge did not have the jurisdiction to separately decide that application, cannot be sustained.

(Paras 4 & 12)

Adarsh Jain, Advocate, for the appellant.

R.S. Sihota, Advocate for Cross-objector/respondent.

JUDGMENT

AJAY KUMAR MITTAL, J.

(1) By this order, we are disposing of Letters Patent Appeal and the Cross objections arising out of order, dated 8th September, 1987 passed by the learned Single Judge in F.A.O. No. 239-M of 1986.

(2) The parties solemnised the marriage on 25th November, 1984. In less than one year of the marriage, the appellant filed a petition, dated 7th August, 1985 under Section 10 of the Hindu Marriage Act, 1955 (for short, 'the Act') against the respondent for grant of decree of judicial separation. During the pendency of that petition, the appellant also moved an application on 25th July, 1985, under Section 27 of the Act for return of dowry articles as indicated in the list appended therewith. In the list filed along with petition under Section 27, the value of jewellery was mentioned as Rs. 50,000. She also prayed that the dowry articles may be ordered to be returned before the decision of the main petition filed under Section 10 of the Act. However, Additional District Judge, Kurukshetra, who was seized with the matter, did not accept the appellant's prayer and disposed of the petition filed under Section 10,—*vide* his order, dated 17th October, 1985 and granted the decree of judicial separation.

(3) On the application filed under section 27 of the Act, the parties led their respective evidence and on elaborate appreciation thereof, the Additional District Judge held that certain articles other than the jewellery were still lying with the respondent and accordingly, he directed the latter to return the same to the appellant. However, the appellant's prayer for return of jewellery was declined by the learned Additional District Judge by making the following observations :—

“It has also come in evidence that the petitioner when leaving the matrimonial home brought with her certificates and degrees concerning the academic qualifications of the petitioner and also marriage album. It is also well known that next to her husband, a young newly married woman

loves jewellery. Therefore, it cannot be ruled out that the petitioner used to wear her jewellery or at least kept the jewellery with her particularly when her relations with her husband and parents-in-law had grown strained. Similarly, on the day of festival on 7th March, 1985, the petitioner was expected to have used all those ornaments as a mark of ceremony of the festival. Similarly, the petitioner left the matrimonial home in the absence of her husband and parents-in-law and if she could go to the extent of bringing with her the marriage album and the certificates and degrees of her husband, it was but natural that she must have brought with her jewellery also.

All these circumstances, when considered collectively do go to suggest that the petitioner never trusted the respondent or her parents-in-law and kept all her jewellery with her when she left the matrimonial home on 8th March, 1985 in the absence of her husband and her parents-in-law, she carried back the same to her parents house. It has also come in evidence that while leaving the matrimonial home on 8th March, 1985, she carried an attache or two with her. Therefore, the claim of petitioner regarding the jewellery against the respondent is dismissed.

(4) Feeling dis-satisfied with order dated 12th November, 1986 passed by the learned Additional District Judge, the appellant and the respondent filed separate appeals which were registered as F.A.O. No. 239-M of 1986 and F.A.O. No. 12-M of 1987. After hearing the counsel for the parties, the learned Single Judge held that the application filed under Section 27 of the Act should have been disposed of along with the main petition filed by the appellant under Section 10 and that the learned Additional District Judge did not have the jurisdiction to separately decide that application, but he declined to interfere with order dated 12th November, 1986.

(5) The appellant has assailed the order of the learned Single Judge by filing the present appeal under Clause X of the Letters Patent and the respondent has filed Cross Objections reiterating his plea that the Additional District Judge did not have the jurisdiction to separately decide the application filed by the appellants under Section 27 of the Act.

(6) Shri Adarsh Jain, learned counsel for the appellant defended order, dated 12th November, 1986 in so far as the question of jurisdiction of the learned Additional District Judge to separately decide the application filed under Section 27 of the Act is concerned by arguing that the appellant could not be made to suffer on the ground of the mistake committed by the trial Court. He further argued that the failure of the trial Court to adjudicate the application filed by the appellant under Section 27 along with the petition filed under Section 10 of the Act does not have the effect of vitiating order, dated 12th November, 1986. He submitted that order, dated 12th November, 1986 should be read as a part of the main decree dated 12th December, 1985, passed by the trial Court. In support of his arguments, Shri Jain relied on the judgment of the Supreme Court in **Balkrishna Ramchandra Kadam versus Sangeeta Balkrishna Kadam (1)**.

(7) Shri R.S. Sihota, learned counsel for the respondent relied on the judgment of the Supreme Court in **Pratibha Rani versus Suraj Kumar and another (2)**, and argued that the application filed by the appellant under Section 27 of the Act should have been dismissed by the learned Additional District Judge. Shri Sihota stressed that the claim of the appellant regarding return of jewellery was not maintainable because the same was her Istridhan and she was absolute owner thereof and as such, the same could not be treated as property belonging jointly to the husband and wife for the purpose of Section 27 of the Act.

(8) We have given serious thought to the respective arguments. The core question which arises for determination in this appeal and cross objections is whether the appellant can maintain a petition under Section 27 of the Act for the return of her jewellery in proceedings under Section 10 of the Act. Section 27 of the Act reads thus :—

“27. Disposal of property.—In any proceeding under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.”

(1) J.T. 1997 (7) S.C. 742

(2) AIR 1985 S.C. 628

(9) A careful analysis of the aforesaid provisions leads to an irresistible conclusion that in any proceeding under the Act, the Court may, while passing a decree, make provisions with respect to any property presented at or about the time of marriage which may belong jointly to both the husband and the wife.

(10) In **Balkrishna Ramchandra Kadam's case** (supra), the Apex Court, while considering the scope of Section 27 of the Act, has summarised in paras 10 and 13 as under :—

- “10. On a plain reading of the Section, it becomes obvious that the Matrimonial Court trying any proceedings under the Hindu Marriage Act, 1955, has the jurisdiction to make such provision in the decree as it deems just and proper with respect to any property presented “at or about the time of marriage” which may belong jointly to both the husband and the wife. This Section provides an alternative remedy to the wife so that she can recover the property which is covered by the Section, by including it in the decree in the matrimonial proceedings, without having to take recourse to the filing of a separate Civil Suit and avoid further litigation. In the instant case, we find that the wife had laid claim to certain items of jewellery and in her deposition, she had mentioned the items of jewellery which she had received “at or about the time of her marriage” and, in particular, had mentioned the items of jewellery which were give to her by her father at the time of the marriage.
13. In our opinion, the courts have not gone into the quesiton in its correct perspective. The trial court proceeded to negative the claim of the respondent-wife by holding that the court had no jurisdiction to deal with the property rights of the parties and gave no opportunity to the parties to lead evidence in support of their respective claims. The finding of the trial court clearly overlooked the provisions of Section 27 of the Hindu Marriage Act which unmistakably vests the jurisdiction in the court to pass an order, at the time of passing a decree in a matrimonial cause, in respect of the property presented, at or about the time of marriage, which may belong jointly to the husband and the wife. The learned

Single Judge also fell in complete error while concurring with the view of the trial court to say that there was no evidence on the record to show that the property claimed by the wife was presented to her at the time of her marriage. The learned Single Judge failed to take notice of the deposition of the respondent in that behalf. Moreover, the property, as contemplated by Section 27 is not the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression "at or about the time of marriage" has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "joint property". Implying thereby that the property can be traced to have connection with the marriage. All such property is covered by Section 27 of the Act."

(11) The Apex Court in **Pratibha Rani's case** (*supra*) was dealing with a case where it was urged that the criminal liability of the husband gets washed off in case of Ishtridhan because upon a woman entering the matrimonial home the ownership of Ishtridhan property becomes joint with her husband or his relations. The majority of the Supreme Court negatived this plea and held that for the purposes of Sections 405 and 406 of the Indian Penal Code, the ownership of the Ishtridhan cannot be regarded as joint and the husband cannot get immunity from prosecution on the charge of dishonest mis-appropriation thereof.

(12) In our opinion, the proposition of law laid down in **Balkrishna Ramchandra Kadam's case** (*supra*), is squarely applicable to the case before us. Therefore, the order of the learned Single Judge cannot be sustained.

(13) During the course of hearing, learned counsel for the parties agreed that since the first appeal and the present Letters Patent Appeal remained pending in this Court for about 20 years, the matter, on merits, be adjudicated in this appeal to avoid further delay.

(14) On merits, Shri Adarsh Jain, learned counsel for the appellant referred to the testimony of witnesses and in particular PW8-Khushi Ram to persuade this Court to record a finding that 20 tolas of jewellery had been given to the family of the husband and that the same had not been returned by them. A perusal of the record shows that both the parties had agreed to swear in Mandir regarding

the jewellery. As per record, both the parties in the presence of Local Commissioner stuck to their respective claims. In view thereof, it cannot be said in definite terms as to which party is deposing falsely. The value of 20 tolas of jewellery as estimated by the wife in her claim petition under Section 27 of the Act is Rs. 50,000/- PW-8 Khushi Ram had deposed that items as mentioned by the wife in the petition were given at the time of marriage but he could not depose with exactitude the quantity of jewellery which was given to the appellant at the time of marriage as the jewellery was never weighed in his presence. However, keeping in view the totality of facts and circumstances, in our opinion, the ends of justice would be met if the appellant-wife is awarded a sum of Rs. 20,000/- to be paid by the husband on account of jewellery which was given at the time of marriage.

(15) The appeal and the Cross Objections are disposed of in the manner indicated above. The parties are left to bear their own costs.

R.N.R.

Before Ajay Kumar Mittal, J

NO. 86076848 EX. CONST. NASIB SINGH,—*Petitioner*

versus

UNION OF INDIA & OTHERS,—*Respondents*

CrI. W.P. No. 374 of 2000

30th November, 2004

Constitution of India, 1950—Arts. 14 & 227—Border Security Force Act, 1968—S. 117—Charge against Constable of assaulting superior Officer—Trial by the Summary Security Force Court (SSFC)—Dismissal from service—Director General BSF also affirming the order of dismissal—Challenge thereto—No allegation that constitution of the SSFC was improper or it was not properly convened—Proceedings conducted in accordance with the procedure prescribed—No violation of the principles of natural justice in any manner—Order of the SSFC dismissing the petitioner based on evidence—High Court has no jurisdiction to re-examine the conclusion and probabilities on the basis of evidence—Petition dismissed.