

dismiss the present appeal. In support of his contention, he relied upon a judgment in *Ishar Dutt and another v. Mussi Dube and others* (1), I have gone through the said judgment, but it has no application to the facts of the present case. In that case, two separate appeals were filed by the two sets of defendants. The appeal filed by one set of defendants was dismissed by the Additional District Judge; whereas the appeal filed by the other set of defendants was accepted, and, consequently, the suit of the plaintiffs against all the defendants was dismissed.

(3) In the present case, Dhannu Ram and Ramel Dass are real brothers and their interest in the suit is common. Both of them had engaged one counsel before the lower appellate Court and they had filed a joint written statement in the trial Court. Under these circumstances, if the appeal filed by one of them has already been dismissed by this Court, then the second appeal on the same grounds is liable to be dismissed on that short ground alone. Dismissed.

H. S. B.

Before M. M. Punchhi, J.

SURINDER KAUR,—Appellant

versus

MADAN GOPAL SINGH,—Respondent.

F.A.O. No. 188-M of 1979.

May 12, 1980.

*Hindu Marriage Act (XXV of 1955)—Section 27—Principles underlying therein—The word 'belong' occurring in section 27—Scope of—Stated.*

Held, that a reading of section 27 of the Hindu Marriage Act, 1955 shows that analytically the section pours out the following principles (1) there must be a matrimonial proceeding pending under the Act before the Court and an application for disposal of property must be made before the decision of the proceeding; (ii) it is not incumbent on the court to make provision in the decree with regard to disposal of property and it is left to its judicial discretion; (iii) the provision

(1) AIR 1915 Allahabad 367.

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so made, if any, must be just and proper as the Court deems having regard to the adjustment of the equities between the parties and all surrounding material circumstances; (iv) the order would envelope only that property which was presented at or about the time of the marriage, which means not only presented at the marriage but also at a time either prior to or after the marriage. That must be in close proximity of the time of the marriage and not to those made outside the extending limit of that time; (v) the property so presented may either be to the wife or the husband or both; and (vi) at the time the court is required to exercise its discretion, the property may belong jointly to both the husband and the wife. The word 'belong' necessarily does not reflect title to the property in the sense of ownership. It only denotes connection with the property and is a term connecting a person with his possessions. To give an earthly example, a saree presented by the husband or anyone may or may not involve transfer of title to the saree to the wife but will belong to her exclusively and not jointly to both the husband and the wife as the very nature of the garment so suggests. Similarly, a suit presented to the husband in the same fashion would be exclusively belonging to the husband. Properties and articles presented from any source and to any one of them which by the very nature of the present, or by intention of the donor, or by tacit agreement of spouses, has come to be jointly in use by both the husband and the wife, can well be said to belong jointly to both of them. An earthly example of such incident can be that of a set of dining table and chairs for joint user in the matrimonial home irrespective of the fact as to which spouse received it as a present within that allocated time. The said dining table and chairs would obviously be joint belonging of both the husband and the wife and capable of being subjected to orders under section 27 of the Act. (Paras 4 and 5).

*First Appeal from the order of the Court of Shri R. S. Sharma, PCS, Senior Sub-Judge, Chandigarh, dated 10th October, 1979, ordering that the petition of the petitioner is dismissed. Parties are left to bear their own costs.*

*Civil Misc. 1663-C-II|80.*

*Objection petition filed by Smt. Surinder Kaur under Order 41 Rule 26 of the Code of Civil Procedure.*

*Ujagar Singh, Advocate, for the appellant.*

*G. R. Majithia, Advocate, for the Respondent.*

#### JUDGMENT

*Madan Mohan Punchhi, J.*

(1). This first appeal involves the problems of salvage of a broken marriage. To what extent can the matrimonial Court indulge

in the rescue operation and the sphere of its activity is the point of a combat between the warring divorced spouses involving disposal of property.

Shrimati Surinder Kaur, appellant was married to Madan Gopal Singh, respondent at Chandigarh on 14th April, 1973. On 5th November, 1974, she was in the first matrimonial Court claiming judicial separation from her husband on the basis of cruelty meted out to her by the husband. The husband before hand on 16th July, 1974 had come to the first matrimonial Court claiming restitution of conjugal rights said to have been disrupted on 30th August, 1973 by the withdrawal of the wife from his society. During the pendency of the aforesaid two matters, the wife filed an application under section 27 of the Hindu Marriage Act (hereinafter briefly referred to as the Act) on 9th January, 1975 for disposal of the property enumerated in Annexures 'A' and 'B' appended therewith. This application was also kept pending with the aforesaid two matters. The husband with the permission of the Court obtained withdrawal of the petition under section 9 of the Act in order to file a petition under section 13(1) (i-b) of the Act. Thus on 18th April, 1977, he filed a petition for a decree of divorce on the ground that the wife had deserted him for a continuous period of not less than two years. The three matters, namely, the husband's petition for divorce; the wife's petition for judicial separation and the wife's petition for disposal of property, were disposed of by a common judgment and order of the first matrimonial Court on 10th October, 1979. The petition of the husband was allowed whereas both the petitions of the wife were dismissed.

(2) None of the spouses has chosen to challenge the judgment and decree of the first matrimonial Court either in the petition under section 10 or under section 13 of the Act. Thus, the dissolution of the matrimonial bond between the spouses is welcome to both of them. They are at peace on that front but are at war on the matter of disposal of property. Since the petition of the wife for such purpose was dismissed, she has challenged through this appeal that order of the first matrimonial Court.

It is noteworthy that the first matrimonial Court, on the pleadings of the parties to which reference would be made later, framed

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the following issue on the subject—

“Whether Smt. Surinder Kaur is entitled to the return of property claimed by her in her application dated 9th January, 1975 under section 27 of the Hindu Marriage Act?”

(3) The Court while disposing of this issue took the view that orders under section 27 of the Act could only be passed with respect to property which belonged jointly to both the husband and the wife and there was no claim in the petition that the property enumerated in Annexure ‘A’ and ‘B’ belonged jointly to the parties. On that premises, the evidence of the parties on the issue, though examined, was not appraised and discussed to come to any finding. It is this view of the matter which is unacceptable to the wife and she appeals.

Section 27 of the Act is in the following terms :—

“27. Disposal of property.—In a 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.”

(4) It would seem that the object of studding this section in the fabric of the Hindu Marriage Act is intended to pass consequential orders in relation to certain properties between the parties while dealing with any proceedings under the Act, and to make provision of the nature in the decree to be passed in those proceedings. Obviously, an application for the purpose must be made before the proceedings terminate and the order can be made at the time of the passing of the decree. The sequence in which the said section appears in the statute is, after the provision for the passage of decree in section 23 of the Act and then to provide remedially as well in the terms of granting permanent alimony and maintenance under section 25, deciding the custody of the children under section 26, and to dispose of property jointly belonging to both the husband and the wife under section 27, so as to ameliorate the lot of the spouse or spouses left bruised by a broken or a shattered marriage. It would also seem that section 27 does not envisage deciding any

question as to the title of the property involved therein or extending to all the properties of the spouses. It is couched in such a language so as to narrow its ambit within a small sphere. Analytically, the section pours out the following principles:—

- (i) It must be a matrimonial proceeding pending under the Act before the Court and an application for disposal of property must be made before the decision of the proceeding ;
  - (ii) it is not incumbent on the Court to make provision in the decree with regard to disposal of property and it is left to its judicial discretion ;
  - (iii) the provision so made, if any, must be just and proper as the Court deems having regard to the adjustment of the equities between the parties and all surrounding material circumstances ;
  - (iv) the order would envelope only that property which was presented at or about the time of the marriage, which means not only presented at the marriage but also at a time either prior to or after the marriage. That must be in close proximity of the time of the marriage and not to those made outside the extending limit of that time ;
  - (v) the property so presented may either be to the wife or the husband or both; and
  - (vi) at the time the Court is required to exercise its discretion, the property may belong jointly to both the husband and the wife.
- (5) Now it is well understood that the word “belong” necessarily does not reflect title to the property in the sense of ownership. It only denotes connection with property and is a term connecting a person with his possessions. It appears to me that the property thus presented to the spouses within the afore-explained time limit, may fall jointly to belong to both the husband and the wife, irrespective of the title in those properties to be vesting in one or the other, or both. To give an earthly example, a saree presented

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by the husband, or anyone else to the wife, may or may not involve transfer of title to the saree to the wife, but will belong to her exclusively, and not jointly to both the husband and the wife, as the very nature of the garment so suggests. Similarly, a suit presented to the husband in the same fashion would be exclusively belonging to the husband. Properties and articles presented from any source and to any one of them which by the very nature of the present or by intention of the donor, or by tacit agreement of spouses, has come to be jointly in use by both the husband and the wife, can well be said to belong jointly to both of them. An earthly example of such incident can be that of a set of dining table and chairs for joint use in the matrimonial home irrespective of the fact as to which spouse received it as a present within that allocated time. The said dining table and chairs would obviously be joint belonging of both the husband and the wife and capable of being subjected to orders under section 27 of the Act.

(6) If any parity is permissible, it can be drawn with the principle underlying section 25 of the Act. Each spouse's earning capacity and other property, despite title thereto, is taken into account while equitably apportioning the income of both the spouse's in such a manner so as to keep the less provided one adequately maintained at the cost of the other having regard to their post-marital social status. In the same way, section 27 of the Act provides for sharing of that property which the spouses received individually or collectively as presents, at or about the time of the marriage, and which had come to be, as a way of life, in their joint use in their day to day living and thus 'belongs' for the purpose. If matrimony is disrupted, such jointly belonging articles would require the attention of the Court to be apportioned between the spouses as measure of remedial relief.

(7) In *Kamta Prasad v. Smt. Om Wati*, (1), a Single Bench of the Allahabad High Court while examining the scope of section 27 of the Act spelled therein the power of the Court to even pass a decree relating to property belonging exclusively either to the husband or wife; as a power inherent to the proceedings under the Act. It was also held that the words "which may belong jointly to both the husband and the wife" in the section were reflective of an

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(1) AIR 1972 All. 153.

enabling power to deal with jointly owned properties also but not in restriction of Court's power to such properties alone. To this view, there can be no two opinions as also for the matrimonial Court to act as a civil Court for the purposes of property falling outside the scope of section 27. Now, however, the legislature advisedly, and for the repair or reconstruction of the institution of marriage, has warranted most expeditious disposal of matrimonial cases at the trial as well as the appellate stages, making them time bound. If questions of settlement of all kinds of properties over and above the ones envisaged in section 27 were to engage the attention of the matrimonial Court as a civil Court, as if trying a regular suit, it would well nigh be impossible to proceed with the matrimonial disputes with utmost speed. It is for that reason, since the order relating to property has to form part of the decree, that discretion has been left to the Court to deal with such property, if it can, with utmost speed, and otherwise to leave the parties to agitate the matter in a regular suit. However, the Allahabad decision in *Kamta Prasad's case* (supra) is prior to the Marriage Laws Amendment Act, 1976. This precedent cited by the appellant does not come into grips with the question at hand. In the said decision, "jointly belonging" has been equated with "jointly owning". With due respect to the learned Single Judge, the interpretation put to the expression "belong jointly" is too narrow for the purposes of section 27, bereft of any reasoning for the curtailment of its ambit, as has been reflected therein.

(8) The next decision cited at the bar was a Division Bench of the Mysore High Court in *M. D. Krishnan v. M. C. Padma* (2), which has explained that the property claimable under section 27 must be a property which must have been received as a present at, or about the time of marriage, and that has been spelled to mean near or round about the time of marriage, whether it be before or after it. The decision in that case settled a controversy between a wife and a husband where the former claimed return of the silver utensils and articles valued at Rs. 1,000 by granting her Rs. 600 as their value and permitting retention of Rs. 2,000 given to the husband alone as the customary 'Var Dakshina' as a present to the bridegroom at the time of the marriage. The Bench took the presents of the silver articles to be made at or about the time of

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(2) AIR 1968 Mysore 226.

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marriage jointly to the husband and the wife. It is from this view expressed that the learned counsel for the respondent contended that the presents contemplated under section 27 have not only to jointly belong to the spouses but they have to be made jointly to them at or about the time of marriage. This again, with due respect to the learned Judges constituting the Bench, is a decision devoid of any reasoning. Section 27 does not indicate that the presents coverable thereunder are those which are received jointly at or about the time of marriage but covers only those properties which jointly belong to the spouses.

(9) The third decision cited at the bar was a decision of a Division Bench of this Court in *Bhai Sher Jang Singh I.A.S. (Retired) and another v. Smt. Virinder Kaur* (3), wherein it has been observed as follows :—

“Section 27 of the Hindu Marriage Act empowers a Court while deciding a matrimonial dispute to also pass a decree in respect of property which may jointly belong to both the husband and the wife. This section at best provides a civil remedy to an aggrieved wife and does not in any way take away her right to file a criminal complaint if the property belonging to her is criminally misappropriated by her husband.”

(10) The aforesaid Bench's decision is no precedent for the question in hand.

(11) In the petition under section 27 of the Act, the wife has claimed return of the property/articles presented to her at or about the time of marriage, the possession whereof was claimed to be with the husband and his relatives. The list of the articles was detailed in Annexures 'A' and 'B'. It was further claimed that if the said property/articles detailed in the annexures were damaged, used or made unserviceable by the husband or his family members, then he be held liable to pay the costs thereof. It was claimed that a suitable provision in the decree likely to be passed under section 10 of the Act be made for return of the property/articles presented to her at or about the time of the marriage as detailed in the annexures. The articles enumerated in Annexure 'A' allegedly presented to the

(3) 1978 Hindu Law Reporter 703.



petitioner at or about the time of the marriage broadly fall in two categories — (1) ornaments and clothes which by their very nature would be meant singularly for her own day to day use and (2) other articles meant for common use of the parties. Annexure 'B' broadly contains list of property/articles presented to the husband which by their very nature were meant for his exclusive use and the others for the use of his relatives. The husband in his written statement denied the possession of the articles. He has given an explanation that the wife has already taken away articles mentioned at Serial Nos. 1, 2, 5 to 8 in Annexure 'A' and Serial No. 2 in Annexure 'B'. He has also denied articles mentioned at Serial Nos. 3 and 4 in Annexure 'A' and at Serial No 1 in Annexure 'B' to have been given at or about the time of marriage in articles at Serial Nos. 3 to 12 . . . in Annexure 'B' to have been given to his relatives. He has also claimed that the aforesaid articles have been over-valued and they do not fall within the ambit of section 27. The first matrimonial Court, as said before, did not marshal the evidence, though suggestedly Karam Singh (R.W. 2), Brahmjit Kalia (R.W. 3) and Shangara Singh (R.W. 4), the father of the wife and Surinder Kaur (R.W. 6), the wife, have deposed in relation to the properties/articles whereas the husband himself as P.W. 5 has controverted the claim of the wife.

(12) It took more than five years to finalise the proceedings before the Court below. Such lengthy trial in a matrimonial matter is uncalled for and contrary to the spirit of the Hindu Marriage Act as amended. Matrimonial jurisdiction is of a special nature and deserves special attention. Relegating such proceedings to the position of ordinary civil proceedings would not only frustrate the object of the legislation but would lead to sorrowful results. In India where Hindu Marriage is by and large arranged by others than the spouses themselves, its breakage causes ripples in members of the society. It is one of the reasons why most of the judgments rendered by matrimonial Courts, which fall squarely within section 41 of the Indian Evidence Act, are judgments *in rem* affecting the world at large. If a contested issue of disposal of property were to engage the attention of the matrimonial Court predominating other proceedings regarding which decree is sought, then the decision cannot be rendered with promptitude. The disposal of property as envisaged under section 27 can only become part of the decree, subject to other conditions fulfilling, if it is capable of being settled without consuming much time so as not to entail delay in

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passage of the decree. But if the Court finds itself confronted with regular contest from the tenor of pleadings, the divergence of views and the anticipated quantity of evidence, it would well be within its right to refuse passing orders regarding disposal of property as a part of the decree. The disposal of property matter cannot outweigh the main proceedings before the Court regarding which it is required to pass a decree.

(13) In the instant case, bulk of the evidence predominates on the disposal of property question. Since the Court framed the necessary issue and recorded the evidence thereon by employing precious time of the Court, it was too late in the day to have thrown out the application of the wife under section 27 on the technical ground that the properties claimed by her in Annexures 'A' and 'B' had not been averred to jointly belong to the spouses. In the first place, the Court has to discern as to whether the presents received by either of the spouses from whatever source were in fact received and within the time earmarked in the section. Then in the second place the Court has to see as to which of the present or presents belong jointly to the spouses. Viewed from this light the pleading of the wife cannot be said to be altogether wanting of the plea of joint belonging.

(14) As a sequel to the aforesaid discussion, it would become necessary to examine the case on merits as it cannot be left to be reargued afresh in a Court of matrimonial or civil jurisdiction. Necessarily, the Court below has to be asked to record a finding on issue No. 2 and report the matter back to this Court for final disposal. The finding will be recorded on the existing material on the records. Let the records of the case be transmitted to the first matrimonial Court with directions to the parties through their counsel to appear before it on 21st March, 1980. The report be sent to this Court within two weeks thereafter and then the appeal be listed forthwith as part-heard.

*M. M. Punchhi, J.—(Oral).*

(15) This should be read in continuation of my order dated 10th March, 1980. The matrimonial Court has returned a finding that articles mentioned at serial numbers 3, 4, 7 and 8 of Annexure 'A' were given in dowry to the wife-appellant and were taken by the husband-respondent to his house at the time of departure of the barat and that the said articles are still with the husband-respondent. This finding has attracted the order from the said Court that the wife-appellant is entitled to the recovery of all these articles. This

finding has been objected to by the husband-respondent in the form of a cross-objection under Order 41 Rule 26, Civil Procedure Code,—*vide* C.M. No. 1663-C.II of 1980 in the first appeal being decided. Notice thereof was given to the appellant through her counsel on May 8, 1980 and thus the said miscellaneous application would merit disposal along with the main matter.

(16) At the outset, it must be mentioned that despite clear directions, the first matrimonial Court did not apportion the articles found to be in possession of the husband which were capable of being earmarked equitably for each of the spouses. Necessarily, the finding has to be tested primarily to establish whether in fact articles at serial numbers 3, 4, 7 and 8 of Annexure 'A' are with the husband and if so, out of those what he can retain for his use and others be surrendered in favour of his divorced wife. The learned counsel for the parties have been at pains to sort this problem out amicably and with the least of bruising to the divorced spouses. Mr. Ujagar Singh, learned counsel for the wife-appellant candidly conceded that he would not press the petition as far as articles mentioned at serial numbers 7 and 8 are concerned and those articles for purposes of the present petition, according to him, shall be deemed to have been taken out of the purview. The only controversy remains to articles mentioned at serial numbers 3 and 4 and to which the comparative claims of the parties value-wise and use-wise has to be settled. There again the parties through their counsel suggest that out of the articles mentioned at serial number 3, the husband-respondent would retain the set of folding hard beds and the remaining articles namely sofaset, dressing table, sunmica central table and the dressing stool would be returned by him in the condition as they exist today to the wife for her use. Similarly, in maintenance of the same spirit, the husband would retain the dinner set steel (one) and the tea set out of item No. 4 and the remaining namely pressure cooker Hawkins, two copper patilas with covers, one copper prat and one press would be returned to the wife-appellant in the condition as they exist today. The suggestions made by the learned counsel for the parties appear to be fair and reasonable and deserve to be adopted as the foundation for decision to settle this petition under section 27 of the Hindu Marriage Act at the appellate stage. This has obviated the necessity of this Court to reappraise the evidence on the question to marshal the claim of the respective parties to the articles in question.

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(17) As a result to the aforesaid discussion, this appeal is partially allowed and the husband-respondent is directed to hand over the afore-mentioned articles, as suggested by the learned counsel, to the wife-appellant for her user forthwith in the condition as they exist today and not to indulge in destruction, substitution or minimisation thereof by any act or omission on his part. This direction be taken as an addendum to the main decree of divorce. There would be no costs in this petition of appeal.

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**H.S.B.**

*Before B. S. Dhillon and G. C. Mital, JJ.*

**BHARAT TEXTILE MILLS,—Petitioner.**

*versus*

**PUNJAB STATE and others,—Respondents.**

*Civil Writ No. 1321 of 1970.*

*May 16, 1980.*

*Industrial Disputes Act (XIV of 1947)—Sections 2-A, 10, 12(5) and 39—Powers of State Government under sections 10 and 12(5) delegated to the Labour Commissioner—Labour Commissioner in exercise of such delegated powers referring an individual dispute to a Labour Court—Notification issued in the name of the President but authenticated by the Labour Commissioner—Such notification—Whether invalid.*

*Held, that where the Labour Commissioner has been delegated under section 39 of the Industrial Disputes Act, 1947 the powers of the State Government to issue a notification under sections 10 and 12(5) of the Act, the mere fact that the Labour Commissioner issued the said notification making the reference to the Labour Court in the name of the President of India would not make any difference in law as such a mistake on the part of the Labour Commissioner was not of substance and was merely of form and, therefore, would not effect the validity of the notification referring the dispute to the Labour Court. The Labour Commissioner was undoubtedly competent to refer the dispute to the Labour Court and it makes no difference if the notification under section 10 of the Act though signed by him*