

(1912) 01 MAD CK 0012
In the Madras High Court

Chellammal

APPELLANT

Vs

T.P. Krishnasawmy Iyer

RESPONDENT

Date of Decision : 01-01-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : 13 Ind. Cas. 618

Hon'ble Judges : Sundara Aiyar, J

Bench : Single Bench

Judgement

Sundara Aiyar, J.—The plaintiff is the wife of the defendant. The latter had instituted a suit for recovery of his wife and for restitution of

conjugal rights. That suit was compromised between the parties and the compromise provided that the ""plaintiff has no objection whatever to give

the 1st defendant herein for being worn by her one pair of kammal set with diamonds which was given to her by her father at the time of her

marriage and which is worth about Rs. 1,200 and one gold sovereign malai which was given to her by the plaintiff and which is worth Rs. 450, and

that at other times the said jewels should be in his custody for safety"". The present suit by the plaintiff is to recover the second of the two jewels

mentioned in the compromise, namely, the kasimalai. The suit has been dismissed by the lower Court on the ground that the provision with regard

to the jewels in the compromise decree is an unexecutable one and that, therefore, this suit is not maintainable, the proper remedy of the plaintiff

being to take out execution of the razinama decree. The Subordinate Judge expresses an opinion that, according to the correct meaning of the

razinctmah, the plaintiff is entitled to wear the jewels in question only on special occasions, and that the defendant is entitled to have its custody

except on those occasions. I am unable to agree with the Subordinate Judge on either of the points. There is no direction in the razinamah that the defendant should put the plaintiff in possession of the jewels, it only says, the husband has no objection to give the wife the jewels for wearing and then states that at other times the jewels should be in the husband's custody. This provision can only be regarded to be declaratory of the rights of both the parties with respect to the jewels. I am, therefore, of opinion that the suit cannot be dismissed on the ground that it is barred by Section 47 of the Civil Procedure Code. On the other hand, I am of opinion that the allegations in the plaint do not disclose any cause of action against the defendant according to the correct construction of the razinamah as I understand it. The learned Vakil for the petitioner argues that the effect of the provision is that the plaintiff is entitled to get possession of the jewels from the defendant, but this is in terms contrary to the provision that the husband should be in custody of the jewels "at other times." I understand the expression "at other times" as connoting all times other than when the wife requires them for wearing. The construction suggested for the petitioner would lead to the result that the jewels should be in the custody or possession of the husband only if and when the wife pleases, but no such words are to be found in the compromise.

2. It is urged that as the jewels belonged to the wife it must be taken that her right of ownership was recognized and that she is, therefore, entitled to get possession of them. What has to be decided is, what are the mutual rights of the parties recognized by the compromise? There is no declaration of unrestricted ownership on the part of the wife. It is stated, no doubt, that one of the jewels was given to her by her father and the other one now in question was given by the husband. According to Hindu Law such jewels would form the stridhanam property of the wife, but when there is a dispute between the husband and the wife and the parties adjust, them by compromise, the question for consideration is not, what are the rights of the parties under the law, but what rights they recognized by the compromise. It seems to me that, probably, the husband wanted to prevent the wife from selling the jewels, but was willing that she should have them for wearing. Hence, the language that the husband has no objection to give the jewels to the wife for wearing; Whether the language would be effective in law to restrain the wife from selling the jewels or

not is not a question raised for decision in the suit. The point that I have to decide is, whether, according to the razinamah, the plaintiff can recover the jewels without an allegation that she required him to give them up for wearing. Admittedly, no such allegation was made; her object is apparently to establish that she is entitled to their possession, whether she wants them for wearing or not. But, to enable her to do so would, as I have already observed, result in running counter to the right of custody which is given to the husband at other times than when the wife wants them for wearing and to make his right of custody dependent entirely on the pleasure of the wife even though she may declare her intention of not wearing them. The result is, I uphold the dismissal of the suit, but not on the other grounds stated by the Subordinate Judge. I cannot agree with the observation that the wife is entitled to wear the jewels only on special occasions as there are no words in the razinamah to support such a construction. The jewels are such as a lady might wish to wear always and there is nothing to restrict her doing so in the compromise. I dismiss the petition, but in the circumstances without costs.