
(2014) 12 KL CK 0015
In the High Court Of Kerala
Case No : Mat. Appeal. No. 111 of 2008 (A)

P.L. Shaju

APPELLANT

Vs

Anitha

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Citation : (2014) 4 KHC 917

Hon'ble Judges : Mr. V. K. Mohanan and Mr. K. Harilal, JJ.

Bench : Division Bench

Advocate : Smt. Thushara James[Conciliator], for the Respondent; Sri. N. Subramaniam, Sri. M. S. Narayanan, Sri. P. T. Girijan, Smt. Usha Narayanan, Advocates, for the Respondent; Sri. N. P. Samuel, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

K. Harilal J. - This appeal is directed against the judgment and decree passed in O.P. No.829/2003 on the files of the Family Court, Thrissur. The appellant and the respondent are the husband and wife respectively. The above O.P. was filed by the respondent herein under Section 10 of the Family Courts Act praying for a declaration that the Fixed Deposit amount in the Service Co-operative Bank, Karuvannur, which stands in the joint names of the appellant and the respondent exclusively belongs to the respondent and directing the said Bank to pay Rs.3,20,000/- together with interest to the respondent and also granting a decree for realising Rs.74,000/- from the appellant.

2. The marriage between the parties was solemnized on 19/1/2000 at Cherupuzhpam Devalayam, Thirumudikunnu, as per religious rites and ceremony and they lived as husband and wife upto 2003. Thereafter, due to the discordancy in matrimony, the relationship got strained and they are living separately. The respondent had filed O.S. No. 529/2003 before the same court seeking divorce under Section 10(vii) and (x) of the Divorce Act on the ground that the respondent had wilfully refused to consummate the marriage and the marriage had, therefore, not been consummated and the non-consummation of

the marriage amounted to an act of cruelty to her. Both cases were tried jointly. After trial the court below dismissed the O.P. No.529/2003, decreed O.P. No. 829/2003 filed by the respondent in part and dismissed the counter claim filed by the appellant. This appeal is filed challenging the decree and the judgment passed in O.P. No.829/2003, decreeing the Original Petition in part and dismissing the counter claim.

3. The brief facts of the case is given below: Prior to the marriage, the respondent's parents deposited Rs.3,00,000/- in the Catholic Syrian Bank, Chalakudy Branch and also paid Rs.2,00,000/- in cash for purchasing the gold ornaments. Gold ornaments were purchased for a sum of Rs.1,47,000/- and remaining Rs.53,000/- was in the possession of the appellant. 1 ? years after the marriage, the appellant compelled her to withdraw the fixed deposit amount in the Catholic Syrian Bank and to transfer the account to the Co-operative Bank, Chalakkdy. She had withdrawn the Fixed Deposit of Rs.3,41,000/-, including the interest and out of the same, Rs.3,20,000/- was again deposited in the joint names of the appellant and the respondent for a period of 3 years with a direction to transfer the interest to the account of the appellant. For the last one year the respondent is residing with her parents. The fixed deposit amount exclusively belongs to the respondent, though it stands in the joint names of the appellant and the respondent. She is also entitled to recover Rs.53,000/-, being the balance amount in the possession of the appellant, after purchasing the gold ornaments. Apart from that, she is also entitled to get Rs.21,000/- spent by the appellant on withdrawal of the F.D. amount from the Catholic Syrian Bank. She prayed for a declaration that the fixed deposit amount in the Service Co-operative Bank, Karuvannur, stands in the joint names of the appellant and the respondent exclusively belongs to the respondent and directing the appellant to pay Rs.3,20,000/- together with interest. She also prayed for granting decree for payment of Rs.74,000/-.

4. The appellant filed a counter statement contending as follows: The suit is not maintainable. The amount deposited in the Catholic Syrian Bank, Chalakkudy Branch, jointly belongs to the appellant and the respondent. The allegation that the entire amount exclusively belongs to the respondent is incorrect. The further allegation that the respondent and her father paid Rs.2,00,000/- for purchasing gold ornaments is also incorrect. He does not know the price of the ornaments purchased. He denied the allegation that he received Rs.2,00,000/- for purchasing ornaments. Ornaments had been purchased by the respondent herself and the appellant was made to believe that they have purchased ornaments to the tune of Rs.2,00,000/-. The averment regarding trust and entrustment is denied. The fixed deposit amount from the Catholic Syrian Bank was withdrawn at the instance of the respondent. The balance amount of Rs.21,000/- was given to the respondent while she was admitted to a computer course and for purchasing books. He filed O.P. No.529/2003 for divorce and all the averments made in O.P.N.529/2003 are true and correct. In fact, he has given 39.71 grams of thali chain worth Rs.18,723/- to the respondent at the time

of marriage.

Thereafter, at her instance, the thali chain was exchanged. That thali chain weighing 51.600 grams and another chain of 52.300 grams, which had been purchased by the appellant and given to the respondent are in her possession. Besides, he had spent Rs.10,000/- for wedding clothings at the time of marriage. Later, he had given dresses to the tune of Rs.25,000/- in addition. He had given two ear-rings weighing 7.44 grams and a jewel ring worth Rs.3,750/- and a wrist watch also. The appellant filed a counter claim for return of the above ornaments or Rs.94,039/- as the equal value thereof. He prayed for dismissal of the O.P. and allowing the counter claim.

5. In the joint trial, P.Ws.1 and 2 were examined and Exts.A1 to A13 were marked for the appellant. R.Ws.1 to 3 were examined and Exts.B1 to B6 were marked for the respondent.

6. We have heard Sri. Dilip J. Akkara, the learned counsel for the appellant and Sri. M.S. Narayanan, the learned counsel for the respondent. The learned counsel for the appellant advanced arguments challenging the findings whereby the Original Petition was allowed in part and rejecting the counter claim filed by the respondent. The learned counsel mainly canvassed two points before us. Firstly, according to him, the court below has seriously erred in finding that the amount deposited in the joint account of the appellant and the respondent as Fixed Deposit belongs exclusively to the respondent. By depositing the money in joint account of more than one person, each person would get legal title proportionately over the amount deposited. Each person would acquire proportionate title over the amount and after the withdrawal each person is entitled to realise his proportionate share. As per banking law and practise also, the Fixed Deposit amount standing in the names of two persons belongs to both and each can claim only half of the amount. But the court below has not adverted to the above principle and also the circumstances under which the said amount was deposited in the joint names. The circumstances clearly prove that the Fixed Deposit was made by the father of the respondent as a gift for both. Secondly, the receipt of four items of gold ornaments given by the appellant to the respondent had been admitted by the respondent in her evidence. But, the court below went wrong by rejecting the claim of the said admitted ornaments or its value without any reasoning.

7. Per contra, the learned counsel for the respondent advanced arguments to justify the reasonings whereby the court below allowed the Original Petition in part and dismissing the counter claim filed by the appellant. According to the learned counsel for the respondent, the appellant has successfully proved the sources of said Fixed Deposit by adducing, both oral and documentary, evidence. Exts.B4 to B6 Passbooks unambiguously show that the amount in the Fixed Deposit absolutely belonged to the father of the respondent and the same was given to his daughter only as a gift at the eve of her marriage. In view of Exts.B4 to B6 and evidence given by R.W.3, the court below can be justified in decreeing

the Original Petition in part and dismissing the counter claim.

8. In view of the legal issue mooted before us by the respective counsel, the questions to be decided are: (i) Whether the deposit in Bank in the joint account of more than one person would confer legal title proportionately to each person over the money deposited. (ii) Will the parties in the joint account acquire proportionate title by the act of deposit in the joint account? Is one of the parties of the joint account precluded from establishing his absolute and exclusive legal title over such deposit? Though the learned counsel for the appellant vehemently contended that by the act of deposit of money in the joint account of more than one person each person would acquire legal title proportionately over such deposit and placed reliance on banking laws and practise, neither any banking law nor judicial authority was placed before us to convince that point. But the learned counsel for the respondent cited *Vasanthakumari v. Omanakuttan Nair* [2009 (2) KHC 1049] and contended that banking laws and practise govern the mode of withdrawal or discharge of the such amount from the joint account only and such rules and guidelines do not confer legal title proportionately to the depositors in the joint account.

9. We have gone through the Banking Regulation Act and Rules made thereunder and S.N. Gupta's Banking Law and Practise. But we could not find out any provision which would confer legal title proportionately to the joint depositors as contended by the learned counsel for the appellant. It is to be borne in mind that the right to withdraw money from the joint account and the right to title over the money deposited in such account are entirely different and distinct. In our view, the main purpose of depositing money in bank is to keep it safely with the benefit of interest and the bank has no authority to confer legal title proportionately over the money to the joint depositors. The reasons or circumstances conducive to make such deposit in the joint account may be various and different. Banking rules and guidelines of the Reserve Bank determines the rights regulating the mode of operation and withdrawal of money from such account and also discharge of that account on maturity and nothing more than that. No doubt, money deposited in the joint account can be withdrawn or account can be discharged in accordance with banking laws practise, guidelines of the Reserve Bank, agreement entered into between the joint depositors and with the bank at the time of deposit. Those laws, rules or guidelines or agreement do not prevent one of the joint depositors from establishing his absolute and exclusive title over the money which is pending in joint account in accordance with the general law and rules governing the transfer of movable property and declaration of right and title etc., before the civil court. Merely on the reason that the money was deposited in the joint account of two or more persons, one who has contributed nothing to that deposit or who has no prior right over any portion of that amount prior to that deposit cannot claim that by the act of deposit in the joint account, he acquired legal title proportionately over such deposit. For declaring absolute or proportionate title over the money in such joint account, the sources of fund, percentage of contribution to that fund,

the manner in which that fund accumulated or raised prior to the deposit, the mode of acquisition of title over the said amount before the deposit are decisive, determinative and depends upon the same, inter alia.

10. To sum up, the act of deposit of money in the joint account in the Bank does not confer legal title proportionately over the money to the joint account holders. Such account holders will not acquire proportionate title over the money merely by way of such deposit or the nature of account. One of the parties of the joint account is at liberty to establish his absolute and exclusive or proportionate title over the money pending in joint account, before the civil court.

11. We have meticulously considered the proposition laid down in the decision in *Vasanthakumari v. Omanakuttan Nair* [2009 (2) KHC 1049]. The above proposition was rendered while considering the legal effect of Section 45 of the Transfer of Property Act which deals with the joint transfer of immovable property for consideration. There, the Court held that where consideration came exclusively from the fund of one of the two joint acquirers with the other contributing nothing for purchase of immovable property, notwithstanding the fact that name of one of them is included in the document for whatever purpose, such person cannot be held to acquire any right. Even though the proposition relates to acquisition of immovable property, we are of the opinion that the principle underlying in the above proposition can be applied to the case where money is deposited in the joint account, for the interest of justice and equity also.

12. In the light of the legal position settled above, the points to be considered in the instant case are: (i) Whether the respondent has succeeded in proving that the amount deposited in the bank in the joint account absolutely and exclusively belongs to her as she has title over the entire amount? (ii) Whether the appellant has succeeded in proving his claim of gold ornaments or the value of the same raised against the respondent in the counter claim?

13. Coming to the evidence on record it is seen that the marriage was solemnized on 19/1/2000 and the first Fixed Deposit was made in the joint names of the respondent and the appellant in the "Catholic Syrian Bank" on 7/1/2000 i.e., 12 days before the proposed marriage. It is also not disputed that the said amount was deposited voluntarily by the father of the respondent at the eve of the marriage. Though the appellant contended that it was a gift to both the appellant and the respondent and thereby both have acquired equal right, no evidence has been adduced to substantiate the said contention. To the contrary, the respondent succeeded in proving that the amount pending in the joint account is the money which was gifted to the respondent alone by her father, by adducing oral and documentary evidence. Since the said amount is the amount which was gifted to the respondent alone earlier to the marriage, the subsequent deposit in the joint account does not make any difference in the respondent's exclusive title over the property, though the account is joint. Even though it was pleaded that half of the said amount was gifted to him also neither any independent evidence nor any circumstance has been brought out in evidence by

the appellant, except his oral assertion. As rightly noted by the court below, it is the usual custom of the society, especially in the Christian Community, that money and ornaments would be given to the bride considering the welfare and future of the bride, by her parents. That apart, going by the oral evidence of R.W.1, the respondent, she has testified that the said amount was deposited in the name of the appellant also as a Trustee of the respondent. The evidence given by R.W.1 gets further assurance from R.W.3, the father of the respondent, who acquired the fund, kept in custody and gave for depositing in the Bank, unequivocally deposed that the money was given for the beneficial enjoyment of his daughter alone. We find no reason to disbelieve his version, deposed before the court. There is no evidence to prove otherwise from the part of the appellant. In view of the Dowry Prohibition Act, it cannot be legally presumed that half of the amount was deposited either as dowry or gift to the appellant. Subsequent to the marriage, the said amount was withdrawn together with interest and out of that amount, Rs.3,20,000/- was again deposited in another bank in the joint names also. As evidenced by Exts.B4 to B6, it was the amount which had been withdrawn from the Catholic Syrian Bank, Chalakudy Branch, which exclusively belonged to the respondent, though it stood in their joint names. It follows that the subsequent deposit made in another bank, after withdrawing the said amount from the earlier bank, also belongs to the respondent. In this analysis, the court below can be justified in finding that item No.1 deposit exclusively belongs to the respondent. The challenge against that part of the impugned order will stand dismissed.

14. Coming to the counter claim, it is case of the appellant that he is entitled to realise gold ornaments and other articles or Rs.94,039.20 as value of the gold ornaments, dresses and a wrist watch which he had given to the respondent. When the respondent was examined as R.W.1, she had denied all the claims of the appellant, except four items in the counter claim; but the appellant miserably failed to adduce any evidence to prove his claims, which she had denied. Since the marriage has not been dissolved, the court below can be justified in rejecting the claim of "thali". But, at the same time, going by the oral evidence of R.W.1, it is seen that she has admitted that the appellant had given a necklace, one pair of ear-rings, a wrist watch and a ring to her. But she emphatically denied the weight of the aforementioned three items of gold ornaments claimed by the appellant. She has no case that she had returned the same to the appellant. If that be so, we find no reason to reject the said claim which stands admitted. The appellant prayed for returning the said necklace and ear-rings or its market value of Rs.49,183.20 in this account. So also prayed for return of ring and wrist watch or its value of Rs.5,750/- (Rs.3750/- + Rs.2,000/-). We find that the respondent is liable to return the aforesaid four items or its total market value of Rs.54,933.20 which he claimed in the counter claim. He is not entitled to get interest for the said amount, as the same is not prayed for.

15. In the result, counter claim will stand decreed directing the respondent to return the necklace, one pair of ear-rings, a wrist watch and a ring or to pay

Rs.54,933.20 as the value of the same, in case now the said gold ornaments and watch are not available in her hand. In the event of default, the appellant is allowed to realise the same ornaments if available in respondent's hand or Rs.54,933.20 from the respondent. He is also entitled to get interest at the rate of 6% per annum from the date of this judgment only as he has not claimed interest for the said amount in the counter claim. The appellant is directed to remit the balance court fee, if any, in respect of appeal against the dismissal of the counter claim, within two weeks from today.

The Mat. Appeal is allowed in part.