
(1955) 09 MAD CK 0018
In the Madras High Court

T.R. Ratnavelu Mudaliar

APPELLANT

Vs

Kamalabai Ammal

RESPONDENT

Date of Decision : 28-09-1955

Acts Referred:

Letters Patent Act, 1865 — Clause 15

Citation : (1956) 69 LW 118 : (1956) 1 MLJ 378

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Judgement

Basheer Ahmed Sayeed, J.—This appeal is against the order made in review by our learned brother, Panchapakesa Ayyar, J., in an Application made in C.S. Nos. 156 and 531 of 1949 by the wife, plaintiff in the latter suit.

2. The present appellant and the respondent were married on 16th June, 1948. They lived together for about 20 days, when misunderstandings arose due to the interference of the proverbial mother-in-law. Allegations were then made against the husband of legal cruelty to the wife and a suit was filed namely, C.S. No. 531 of 1949 for separate maintenance and for return of jewels and clothes, etc., which were given to the wife at the time of the marriage and which she was entitled to get back from her husband. This appears to be a counterblast to the suit filed by the husband, namely, C.S. No. 156 of 1949 asking for restitution of conjugal rights against the wife.

3. Both the suits were tried together by our learned brother and a common decree was passed in both the suits. While drafting the decree the office would appear to have made a mistake in including a clause to the effect that C.S. No. 531 of 1949 was dismissed. This decree was later amended on an application by the present respondent, and the clause which stated that C.S. No. 531 of 1949 stood dismissed was deleted from the decree. The effect of this order in the amendment application was that the rest of the decree as drafted was in conformity with the judgment passed by our learned brother and there was no need further to amend the decree and the decree also remained as a common

decree in both the suits.

4. It transpires, however, that in the application filed by the respondent for amending the decree there was a prayer that since the appellant did not return the particular jewel, namely, a gold chain worth about 16 sovereigns, he should be directed to do so by the Court. The learned Judge expressed that such a thing was not possible in an application for amendment of the decree, and that, if anything, an application to this effect could be made by way of a review. Taking a hint from this dictum, the present respondent filed an application for review of the decree in the said two suits. That application was strongly resisted by the present appellant on various grounds, the import of which was that it was barred by limitation and that a review application did not lie in the circumstances of the case. The learned Judge, however, excused the delay of nearly 27 years in filing the review application and granted the prayer of the respondent in his order. It is this order in review that is now under appeal by the appellant before us.

5. A preliminary point was taken by the learned Counsel for the respondent that no appeal lay against the order granting review on the Original side of this High Court. When it was pointed out to him that Clause 15 of the Letters Patent gave a right of appeal against a Judgment of the single Judge on the Original Side, the learned Counsel did not press his objection any further.

6. We have heard both the learned Counsel at length and we have been taken through all the previous proceedings in the two suits and the amendment application and also the review application. To our mind, the decree, as it now stands, is a common decree, which governs both the suits and the directions of that decree are inter-related and interdependent. Our reading of the decree makes it clear that the appellant is directed to return the jewels on condition that the respondent agrees to restore the benefit of conjugal life to the appellant. In fact, it is conceded that the appellant, in anticipation of the respondent complying with the terms of the decree, returned all the jewels excepting one item that is now the bone of contention and also a saree referred to in the decree. It is difficult for us, reading the terms of the decree as they stand, to separate the terms therein or to make them take effect independently or that they can come into operation irrespective of each other. The two parts of the decree must be considered to be parts of one and the same whole and they cannot be separated so as to enable either party to claim the benefit of one part without complying with the obligation that is cast by the other part on the party concerned. That is why it is made a common decree to cover the claims in both the suits.

7. Mr. Radhakrishnan appearing on behalf of the respondent has attempted in vain to show that his client is entitled to the return of the jewel in question without complying with that direction of the decree which makes her give the benefit of conjugal life to the appellant. He has contended before us that the letter, which has been given to the appellant by his client the respondent to the effect that she was leaving the house of the appellant of her own accord not

being agreeable to live with him, was one which had been obtained by the appellant under fraud and coercion and so forth. No proof has been adduced in support of this allegation and no enquiry has taken place on this contention. He does not say why the respondent should not comply with the direction against her to give the benefit of conjugal life to the appellant and now without complying with this direction his client would be entitled to get the jewel when one condition is made dependent on the other. It is, however, open to the respondent to prove that by reason of the conduct of the appellant, she has been prevented from complying with the terms of the decree, which call upon her to give the benefit of conjugal life to the appellant, in which case alone she will be entitled to a return of the jewels by means of executing the decree, which is common to both her suit and that of her husband. But this result cannot be secured by way of any order in review like the one under appeal. In our opinion, there is no scope for such an order in review. It is plain that even an order in review directing one of the parties to comply with certain of the requirements would still have to be executed in order that the decree might be given effect to. In the circumstances, we do not find that there was any justification for the review application, much less for its being ordered. It is inconceivable that what a judgment-debtor failed to do in pursuance of a decree could be enforced against him by means of a review application, instead of by way of execution of the decree itself. In our opinion, the proper remedy for the respondent is only by means of executing the decree and not by way of a review.

8. We therefore set aside the order passed in review and allow the appeal. Each party will bear his or her costs of this appeal.