



2025:KER:15618

Mat.Appeal No.298/2017

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 27TH DAY OF FEBRUARY 2025 / 8TH PHALGUNA, 1946

MAT.APPEAL NO. 298 OF 2017

OP NO.519 OF 2011 OF FAMILY COURT, MALAPPURAM

APPELLANT/PETITIONER:

SREEJA.S
D/O. SREEDHARAN, AGED 44 YEARS, THANDUPARAKKAL
APARTMENTS, TANA, MAMPAD P.O., MALAPPURAM DISTRICT.

BY ADVS.
K.S.HARIHARAPUTHRAN
BHANU THILAK

RESPONDENT/RESPONDENT:

NANDAKUMAR.P., AGED 55 YEARS, S/O. VELAYUDHAN,
PANAYINGAL HOUSE, CHAKKALAKUTH, MUTHUKAD ROAD,
NILAMBUR P.O., MALAPPURAM-679329.

BY ADVS.
SMT.ANJU CLETUS
SRI.JITHIN LUKOSE
SRI.P.SAMSUDIN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
21.02.2025, THE COURT ON 27.02.2025 DELIVERED THE FOLLOWING:



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JUDGMENT

SHOBA ANNAMMA EAPEN, J.

The wife, who was the petitioner in OP No.519 of 2011 on the file of the Family Court, Malappuram, is the appellant herein. The original petition was filed seeking return of 47 sovereigns of gold ornaments or its value, allegedly misappropriated by the husband.

2. For the sake of convenience, the parties are referred to as, "husband" and "wife".

3. The marriage between the parties was solemnized on 21.02.2002. There are no issues in their wedlock. According to the wife, she was given 47 sovereigns of gold ornaments at the time of marriage, out of which 35 were purchased by her parents and 12 were gifted by her relatives. In 2003, their relationship got strained and by the month of May, 2003 she was forced to go to her parental home. Thereafter, following several mediations, they lived together in a house built by the husband in 2006. Even thereafter, the husband ill-treated the wife. She left her matrimonial house in 2010. She seeks for return of the gold ornaments.



4. The husband denied the wife's claim that she had 47 sovereigns of gold ornaments. It was contended that the ornaments received by the wife were kept by the wife herself and that he or his family members had not taken the same. He also denied the allegations of harassment and ill treatment. He contended that he had spent a huge amount towards education and treatment of the wife. It was also contended that the gold ornaments were misused by the wife's brother for purchasing a truck.

5. The Family Court, after evaluating the available evidence, partly allowed the original petition, directing the husband to return 48.14 gms of gold ornaments. Aggrieved by the same, the wife has come up in appeal.

6. Heard the learned counsel on both sides.

7. According to the wife, the entire gold ornaments of 47 sovereigns given to her at the time of marriage was misappropriated by the husband for his own use. She further claimed that after an initial separation in 2006, following some mediation talks, they again lived together; and finally, they separated in 2010. The wife also claimed that after the marriage, the husband was ill-treating her, demanding more gold and money.



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In order to prove her claim, she relied on her own testimony as well as the oral evidence of PW2 to PW4 bank officials and Exts.A1, A2 and X1 to X3 documents. She claimed that a perusal of Ext.A1 series photo album proves that she had worn 47 sovereigns of gold ornaments; and further, Ext.A2 estimate reveals that 35 sovereigns of gold ornaments were purchased at the time of her marriage. According to her, Exts.X1 to X3 documents also reveal that her gold ornaments were pledged by the husband on several occasions. Thus, she claimed for the return of the entire gold ornaments.

8. The husband, on the other hand, contended that he was not aware of how much gold the wife wore at the time of marriage and that there was no entrustment or misappropriation of the gold ornaments belonging to the wife. He further contended that huge amounts were spent for the treatment of the wife. He relied on his own oral testimony as well as Exts.B1 series and B2 to B4 documents.

9. On a perusal of Ext.A1 series photographs, it is seen that the wife had worn a considerable quantity of gold ornaments at the time of marriage though the claim of 47 sovereigns of gold



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ornaments may not be correct. Ext.A2 is the estimate given in the name of Sri.Sreedharan, who is the father of the wife, in respect of 35 sovereigns of gold ornaments. The husband has not completely denied that the wife was having gold ornaments, but stated that he was not aware of how much gold she was in possession. On the evidence, it could be held that the wife had, at the time of marriage, 35 sovereigns of gold ornaments.

10. A perusal of Exts.X1 to X3 documents reveals that the husband was in the habit of pledging gold ornaments. According to the husband, the ornaments reflected in Exts.X1 to X3 belong to his mother and himself. However, he did not care to examine his mother to prove the claim. The husband has testified that some gold ornaments of the wife were pledged by him, but according to him, it was with her consent; and all the gold ornaments pledged were taken back by him and entrusted to her.

11. In IA No.1575 of 2013 filed by the wife before the Family Court for calling for the records from the bank officials, the husband has filed a counter affidavit, contending that the wife has to prove which were the gold ornaments allegedly pledged by the husband with the bank and the details of gold loans



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availed. He further contended that he pledged his mother's gold ornaments in the Canara Bank, Kadalundi Branch, and his own gold ornaments in the Muthoot Finance and the KSFE, Nilamboor. However, he admitted that while they were living together, some of her gold ornaments were pledged for the purpose of her own education and treatment, that too, with her consent. A perusal of Ext.X3 reveals pledging of some gold ornaments. On a perusal of the entire evidence on record, it is seen that the husband was in the habit of pledging gold ornaments. Moreover, the husband's claim that the ornaments pledged belonged to his mother or were his own ornaments remains unsubstantiated.

12. In **Rajesh P.P. & Another v. Deepthi P.R.** [2021 (4) KHC 242], **Pankajakshan Nair v. Shylaja & another** [2017 (1) KHC 620], **Syamini S. Nair & others v. Sreekanth R.** [2022 (3) KHC 145], **Binitha v. Hareendran** [2023 KHC 99] and in an unreported judgment in **Bindhu K.S. v. Rejimon T.B. & another** [2024:KER:8489], it was held by this Court that, once it is proved that gold ornaments were entrusted to the husband, the burden is on the husband to prove as to how the same was dealt with and also that, if it is his case that it was taken by the wife when she left the matrimonial home, the burden is on him to prove the same. The



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very same view was followed in **N.P.Leelamma v. M.A.Moni** [2017 (3) KLJ 311]. No evidence has been adduced by the husband other than his own oral testimony, to prove his contention that she had taken the ornaments when she left the matrimonial home. Hence, in the absence of such evidence, the husband is accountable for the same.

13. On a consideration of the entire materials and evidence on board, it is clear that the gold ornaments belonging to the wife were in the possession and control of the husband and he had access to them. The evidence suggests that the husband had the opportunity and means to manage, use or dispose of the gold ornaments. In the circumstances, no further evidence of entrustment is necessary. It is for the husband to prove that the wife had taken away the ornaments when she returned to her parental home. In the absence of such evidence, the husband is liable to return the same. We have already held that the wife had 35 sovereigns of gold ornaments. Deducting 15 sovereigns which the wife would have had with her for her personal use, the wife is entitled to recover 20 sovereigns of gold ornaments from the husband.



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Accordingly, the appeal is allowed in part. The decree and judgment of the Family Court are set aside and a decree is passed directing the husband to return to the wife 20 sovereigns of gold ornaments or its present market value within one month from today, in default of which, the wife will be entitled to realise the same from the husband personally and from his assets, both movable and immovable. No costs.

Sd/-

SATHISH NINAN

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-