

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945

MAT.APPEAL NO. 255 OF 2014

OP 540/2013 OF FAMILY COURT, MAVELIKKARA

APPELLANT/PETITIONER

BINDHU K.S.

AGED 27, W/O. REJIMON, PANACKAL BHAVANAM,
PONAKAM MURI, THEKKEKARA, MAVELIKKARA.

BY ADV SRI.V.PHILIP MATHEW

RESPONDENTS/RESPONDENTS

- 1 REJIMON T.B., AGED 37,
S/O. BHASKARAN, THEVALAKKADU VEETTIL,
THANNEERMUKKAM SOUTH, MUHAMMA P.O., CHERTHALA
TALUK, PIN-688 525.
- 2 SATHI BHASKARAN
AGED 60 , W/O. BHASKARAN, THEVALAKKADU VEETTIL,
THANNEERMUKKAM SOUTH, MUHAMMA P.O., CHERTHALA
TALUK-688 525.

THIS MATRIMONIAL APPEAL HAVING COME UP FOR
ADMISSION ON 19.1.2024, THE COURT ON 06.02.2024
DELIVERED THE FOLLOWING:

ANU SIVARAMAN & C.PRATHEEP KUMAR, JJ.

Mat.Appeal No.255 of 2014

Dated : 6th February, 2024

JUDGMENT

C.Pratheep Kumar, J.

1. This is an appeal filed by the petitioner in O.P.540/2013 on the file of the Family Court, Mavelikkara against the judgment dated 30.1.2014 dismissing the above O.P.
2. The appellant preferred the above O.P for return of gold ornaments or its value from the respondents who are her husband and mother-in-law. The marriage between the appellant and the 1st respondent was solemnized on 2.7.2006. According to the appellant, at the time of marriage, her father had given her 101 sovereigns of gold ornaments. In addition to the same, she received 23 sovereigns of gold ornaments by way of gift from her relatives. According to the appellant, since the date of marriage the respondents started harassing her and subjected her to cruelty alleging that she is not beautiful and also that she has not brought sufficient gold as expected by them. A child was born in the wedlock on 23.4.2007. Her relatives had given 6 sovereigns of gold ornaments to the child. She regularly used to wear only 5 sovereigns of gold ornaments. The remaining 125 sovereigns including 119 sovereigns of gold ornaments belonging to her and 6 sovereigns belonging to the child are with the respondents 1 and 2. Therefore,

in the petition she prayed for a decree for return of 125 sovereigns of gold ornaments or its value from respondents 1 and 2.

3. The evidence in the case consists of the oral testimonies of PW1 to 4, RW1 and documentary evidence Exts.A1 to A12 and Exts.B1 to B3. After evaluating the available evidence, the learned Family Court Judge dismissed the petition. Aggrieved by the above judgment and decree, the petitioner preferred this appeal, raising various grounds.

4. Now the point that arise for consideration is the following :-

Whether the impugned judgment and decree of the trial Court calls for any interference, in the light of the grounds raised in the appeal ?

5. At the time of arguments the respondents did not turn up. Heard the learned counsel for the appellant.
6. The point :- According to the appellant, at the time of marriage on 2.7.2006, her father had given her 101 sovereigns of gold ornaments. In addition to the same, 23 sovereigns of gold ornaments were gifted by her relatives. After the birth of the child, another 6 sovereigns of gold ornaments were gifted by her relatives to the child. Out of the above total 130 sovereigns of gold ornaments, she used to wear only 5 sovereigns of gold ornaments and the remaining 125 sovereigns of gold ornaments are with the respondents. The claim of the appellant that at the time of marriage she was wearing 101 sovereigns of gold ornaments was not seriously challenged by the respondents. The stand taken by the respondents is to the effect that they are not aware of the quantity of the gold ornaments worn by

the appellant at the time of marriage. Further according to them, the entire gold ornaments belonging to the petitioner and child are in her own possession.

7. The appellant as PW1 and her father as PW2 deposed in clear terms that the appellant was having 101 sovereigns of gold ornaments at the time of marriage. Ext.A8 is the copy of relevant page of the marriage register kept at SNDP Branch No.525 in which the quantity of gold ornaments worn by the bride at the time of marriage was mentioned as approximately 101 sovereigns (808 grams). Ext.A8 was proved by PWs 3 and 4, the Secretaries of the SNDP branch. The respondents have not disputed the genuineness of Ext.A8. The only objection raised by the respondents with regard to Ext.A8 is that in the relevant column for the signature of the guardian of the bride-groom, instead of getting the signature of his guardian, the signature of his brother-in-law was obtained. In addition to Ext.A8, the appellant relied upon Ext.A2 retail invoice issued from Joy Alukkas Jewellery, Kollam as well as Ext.A5 wedding photograph of the appellant. From the evidence of PWs 1 to 4, and Exts.A8, A2 and A5, it can be safely concluded that at the time of marriage, the appellant was wearing 101 sovereigns of gold ornaments given by her father.
8. However, with regard to 23 sovereigns of gold ornaments allegedly gifted to the appellant by her relatives and 6 sovereigns of gold ornaments allegedly gifted to the child by her relatives, except the oral testimonies of PWs1 and 2, there is no reliable evidence. The appellant could have examined her relatives who had allegedly gifted gold ornaments to her and the child, in order to prove such gift.

The persons who had gifted the ornaments to the appellant and her child are the fit persons who could swear about the quantity of the gold gifted by them. In the absence of any such evidence, it is to be held that the appellant could not substantiate the claim that her relatives had gifted 23 sovereigns of gold ornaments to her and 6 sovereigns of gold to her child.

9. Though in the petition and proof affidavit the appellant's case is that she along with the child had a total 130 (101+23+6) sovereigns of gold and out of which 125 sovereigns are still with the respondents, in Ext.A10 FIR and FIS there is no mention about the gold gifted by the relatives to her and the child. Similarly, while in the petition and proof affidavit it is stated that she was regularly wearing only 5 sovereigns of gold, as per Ext.A10 FIR it is 6 sovereigns. Therefore, in Ext.A10 the quantity of gold allegedly in the possession of the respondents is stated as only 95 sovereigns. According to the learned counsel for the appellant, in Ext.A10 the gold mentioned in Ext.A8 alone was mentioned and that the gold received by way of gift was not considered in it as it was not supported by any documentary evidence. In the above circumstances considering the entire facts we hold that the appellant could convincingly prove only 101 sovereigns of gold ornaments with her and that out of which, excluding the 6 sovereigns worn by her, the remaining gold is only 95 sovereigns.
10. The explanation given by the appellant that in Ext.A10 only the gold mentioned in Ext.A8 is stated as there is no documents to prove the gold gifted by the relatives is a convincing one. In this context we make it clear that we are not

finding that the appellant and her child had not received any gold by way of gift from their relatives, but the finding is only to the effect that there is no convincing evidence to find out the quantity of gold received by way of gift. Similarly, the version that she regularly used to wear 6 sovereigns of gold, in place of 5 mentioned in the petition need not be suspected as it is only a partial admission in favour of the respondents. The following answer given by PW1 to a suggestion put during the cross-examination by the learned counsel for the respondents also substantiates the above conclusion:

“95 പവൻ സ്വർണ്ണഭരണങ്ങൾ ഒന്നും രണ്ടും പ്രതികൾ ചേർന്നു വില്ല സരിപ്പിച്ചു എന്ന് പറഞ്ഞത് ശരിയാണ്.”

11. In the decision in **Rajesh P.P. and Another v. Deepthi P.R. , 2021 (4) KHC 242**, relied upon by the learned counsel for the appellant, a Division Bench of this Court held that :

“It is a customary practice in our country, particularly in our state, among all the communities, that parents would gift gold ornaments to their daughters at the time of marriage as a token of love. Indian parents start making jewellery for their daughters since their birth to make sure that they have enough golden jewellery for their marriage. Thus, it would be unrealistic for a Court to insist for documentary evidence regarding ornaments that had changed hands at the time of marriage. The Court can, certainly, act upon oral evidence if it is found credible and trustworthy. It is also quite common that

when the bride moves to the house of the groom after the marriage, she takes all her ornaments and entrust the same, except few required for daily wear, to her husband or in-laws for safe custody. Such entrustment also could be established by the sole testimony of the wife since, normally, no independent witness would be available to witness the same. Once such entrusment is made, a trust gets created. Being a trustee, the husband or his parents, as the case may be, is liable to return the same.....”

12. It is also settled that once it is proved that gold ornaments were entrusted by the wife to the husband, the burden is on the husband to prove as to what happened to the gold ornaments. If the husband has a contention that the wife had taken away the ornaments when she left the matrimonial home, it is also to be proved by the husband (**Leelamma N.P. v. M.A.Moni – 2017 (3) KHC 340**).
13. The nature and extent of proof required to prove the claim for return of gold and cash given in connection with the marriage was highlighted by another Division Bench of this Court in **Bexy Michael v. A.J.Michael, 2010 (4) KHC 376**, in the following words :-

“15. On the touch stone of probabilities all matters will have to be considered and a decision has to be arrived at on a disputed question of fact by a court of facts. It would be unreasonable, irrational, puerile and perverse for a court in the given circumstances to look for documentary evidence regarding the

ornaments and money that had changed hands at the time of marriage. The standards of a prudent man have to be adopted by the court and if a person insists on such documentary evidence to prove the transaction, he would undoubtedly be a very poor specimen of a prudent person. The absence of documentary evidence on which reliance has been placed heavily by the respondent, is thus found to be without any merit or substance.

16. The controversy in most, if not all cases, will have to be decided on the basis of oral evidence. It would be traversity of justice for a Family Court to throw its hands up and merely proceed to dismiss a claim for the simple reason that documentary evidence has not been made available. Strain if necessary, the court must decide whether the assertions and counter assertions made are true or false and which sets of assertions and counter assertions on oath can and need be safely accepted.”

14. Generally in a claim for return of gold, we may not be able to get documentary evidence to prove the quantity of gold ornaments owned by the bride at the time of marriage. However, in this case, there is documentary evidence in the form of Ext.A2 retail invoice and Ext.A8, copy of the relevant page of the marriage register, and Ext.A5 marriage photograph to substantiate the oral testimonies of PWs 1 and 2. Further, the respondents have not disputed the claim of the appellant that on the date of marriage she was wearing 101

sovereigns of gold ornaments. Further, they have not disputed the evidence of PW1 that in the evening of the day of marriage itself, the mother and sister of her husband received all her gold ornaments. Therefore, it is the burden of the respondents to account for the remaining 95 sovereigns of gold ornaments of the appellant.

15. The learned Family Court Judge declined the prayer for return of gold ornaments mainly on two grounds. One of the grounds is that neither in the petition nor in the evidence of PW1, the details of the gold ornaments are disclosed. It is true that in the OP as well as in the evidence of PW1, the details of each items of the gold ornaments are not disclosed. During the cross-examination of PW1, the learned counsel for the respondents also had not asked any question about the details of the gold ornaments claimed by her. During the cross-examination of PW1 not even a suggestion was put to the effect that she did not have 101 sovereigns of gold at the time of marriage. In the above circumstance, much importance cannot be given to the absence of the details of the gold ornaments of PW1, especially because at the time of evidence the respondents have not seriously disputed the fact that at the time of marriage, the appellant was wearing 101 sovereigns of gold ornaments.

16. The main reason stated in the impugned judgment for denying the prayer for return of gold is that the petitioner has not pleaded or proved the entrustment of the gold ornaments to the respondents. There is also a finding that the appellant has no definite case as to when her ornaments were taken by the respondents.

However, the above finding of the trial court is not correct. In the petition there is specific averment to the effect that it was on the date of marriage on 02.07.2006 the respondents received all her gold ornaments. At the time of evidence the appellant as PW1 in clear terms deposed that during the evening on the date of marriage itself her husband's mother and sister removed all her gold ornaments which were worn by her at the time of marriage. The above evidence of PW1 was also not challenged in cross-examination.

17. The contention of the respondents is that the appellant herself is in possession of her entire ornaments. However, with regard to the manner in which those gold ornaments brought to the matrimonial home was taken by the appellant to her residence, the respondents have no consistent case. In the objection, the contention taken by the respondents is to the effect that after the marriage the appellant's gold ornaments were in the possession of her parents and that there was no occasion for them to handle those ornaments. During the cross-examination of PW1 at one stage, the learned counsel for the respondents suggested to her that the appellant's father had taken away all her gold ornaments except those in regular use, to his residence, on the ground that he had loan liabilities. However, the said suggestion was stoutly denied by PW1.

18. At the time of evidence it is revealed that on 22.1.2009 the 1st respondent himself took the appellant and child to her residence and dropped them there. It is also revealed that on 29.1.2009 at about 7.30 am, the appellant along with her parents, younger sister and child went to the residence of the respondents and that when

they reached the respondents' residence, there occurred some untoward incident which resulted in the interference of the local police. According to the appellant, the 1st respondent did not permit them to enter the house, that he assaulted her parents and sister and that is why they had to seek aid of the police. It is also revealed that along with the police party, the appellant and her parents and sister returned to the matrimonial home and taken away some articles from there. According to the appellant, she had taken only her dress and the toys of the child from the residence of the respondents. With regard to the above aspect, the respondents have different versions.

19. During one stage of the cross-examination of PW1, the learned counsel for the respondents suggested to her that on 29.01.2009 in the presence of the police, she had taken away all her belongings and also some of the belongings of the 1st respondent, from his residence. PW1 denied the above suggestion and reiterated that she had taken only her dress and the toys of the child. During the cross-examination of PW1 it is not specifically suggested that the articles taken away by the appellant from the respondents' residence on 29.1.2009 includes her gold ornaments. The suggestion was only to the effect that she had taken away all her belongings, which she denied. However during the cross-examination of PW2, the learned counsel for the respondents suggested that on 29.1.2009, by influencing the police, the appellant along with her mother and sister, had taken away the entire remaining gold ornaments belonging to herself and the child, by force. PW2 also denied the above suggestion and deposed that the appellant had taken only her dress and the toys of the child.

20. During the cross-examination of PW2, it is revealed that on 9.2.2009 and 24.2.2009, the parties were called upon to report at the police station for attempting to resolve the dispute amicably. However on those days the respondents did not turn up and thereafter, Ext.A10 FIR was registered against the 1st respondent. In the above circumstance, a suggestion was put by the learned counsel for the respondents to PW2 that the police attempted mediation as they apprehended a complaint against them from the side of the respondents as the appellant had taken away all the belongings from the respondents' residence with the help of the police. It is also suggested that Ext.A10 was registered against the 1st respondent as he failed to attend the police station for mediation talks. At the time of evidence, the 1st respondent as CPW1 also deposed that on 29.1.2009 the appellant with the help of the police had taken away all her gold ornaments and those of the child, from his residence.

21. From the above evidence of the 1st respondent as CPW1 and the suggestions put to PWs 1 and 2 during the cross-examination itself, it can be safely concluded that till the appellant along with the police party reached the residence of the respondents, the remaining gold ornaments of the appellant were there in the residence of the respondents. Since the respondents contended that on 29.1.2009 in the presence of the police, the appellant had taken away her entire gold ornaments, it is the burden of the respondents to establish the same. Though at one stage it was suggested to PW1 that the appellant along with her mother and sister forcefully taken away the gold ornaments and other articles in the presence of the police, so far they have not made any complaint to anybody in that respect.

The contention of the respondents that the appellant had taken away the gold ornaments belonging to herself and the child by force in the presence of the police even without preparing a mahazar or without any receipt, could not be believed even for a moment, especially because no complaint was given in that respect by the respondents before anybody. The suggestion put during the cross-examination of PW1 that her father had received her entire gold ornaments except those used for daily use to discharge his liabilities is contradictory to the specific stand taken by the respondents that on 29.1.2009 the appellant had taken away the gold ornaments in the presence of the police, by force. The above contradictory stands taken by the respondents only substantiates the contention of the appellant that her 95 sovereigns of gold ornaments are with the respondents and that they were not returned to her till 29.1.2009 when she had to finally leave the matrimonial home.

22. The contention taken by the respondents during the cross-examination of PWs 1 and 2 and at the time of evidence of the 1st respondent as RW1 is that the appellant has taken all her gold ornaments and that of the child from the matrimonial home on 29.1.2009. From the above contention of the respondents itself, it can be safely concluded that when the 1st respondent took the appellant to her residence on 22.1.2009, at least part of her gold ornaments were with the respondents. A mere suggestion put to PWs 1 and 2 during the cross-examination that the appellant had taken away her gold ornaments in the presence of the police on 29.1.2009, which was denied by them is not sufficient to discharge the burden of the respondents in that respect. The respondents could not adduce any

reliable evidence to prove that on 29.1.2009 the appellant has taken her entire gold ornaments as contended by the respondents. In the above circumstances, we are constrained to hold that there is absolutely no merit in the contention of the respondents that on 29.1.2009, the appellant had taken away her gold ornaments from the residence of the respondents.

23. Though the appellant filed the OP against respondents 1 and 2, there is no specific pleadings and reliable evidence to prove that the 2nd respondent had appropriated the gold ornaments of the appellant for her own benefit. On the other hand, the 1st respondent being the husband of the appellant, is liable to account for 95 sovereigns of gold ornaments belonging to the appellant which he received from her on the date of marriage on 02.07.2006. Therefore, the appellant is entitled to get a decree for return of 95 sovereigns of gold ornaments or its value at the time of making payment from the 1st respondent/husband. The learned Family Court Judge failed to appreciate the available evidence in the proper perspective while dismissing the petition and as such, this appeal is liable to be allowed to the extent of granting the appellant a decree for return of 95 gold or its market value. The point is answered accordingly.

24. In the decision in **Ranjeevan v. Pournami Raj, 2023 (2) KLT 286**, a Division Bench of this Court has held that while granting a decree for return of gold ornaments, the Court is obliged to state in such decree to pay the value of the gold in money terms as an alternative relief, in the following words :-

“.....The court is obliged to state in such a decree to pay the value

of the gold ornaments in money terms as an alternative relief. If the value is not quantified, the direction shall be to pay the value at the time of making payment. If the value of the gold ornaments is quantified and the amount is stated in the decree, invariably, interest on such amount from the date of decree till the payment shall also to be ordered.”

25. In the result, this appeal is allowed in part as against the 1st respondent, with costs, as follows :-

The 1st respondent is directed to return 95 sovereigns of gold ornaments to the appellant, within a period of two months from today. In case of default, the appellant is allowed to recover the market value of 95 sovereigns of gold ornaments at the time of making payment, from the 1st respondent and his assets.

The appeal as against the 2nd respondent is dismissed.

Sd/-

Anu Sivaraman, Judge

Sd/-

C.Pratheep Kumar, Judge

Mrcs/22.1.2024