

PETITIONER:
BALKRISHNA RAMCHANDRA KADAM

Vs.

RESPONDENT:
SANGEETA BALKRISHNA KADAM

DATE OF JUDGMENT: 04/09/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
THE 4TH DAY OF SEPTEMBER, 1997

Present:

Hon'ble Dr. Justice A.S. Anand
Hon'ble Mr. Justice K. Venkataswami
A. S. Bhasme, and Manoj K. Mishra, Advs. for the appellant
Ms. J.S.Wad, Adv. for the Respondent

O R D E R

The following Order of the Court was delivered:

O R D E R

This appeal by special leave calls in question the judgement of the Division Bench of the Bombay High Court, dated 30.4.1992 in letters patent Appeal No. 74 of 1991. The controversy in this appeal is limited and revolved around the prayer of the respondent-wife for an order under section 27 of the Hindu marriage Act (hereafter the Act) in respect of the property held by the wife.

So far as the other matrimonial disputes between the parties are concerned, they stand settled and are not the subject matter of an issue before us in this appeal.

The background in which the dispute relating to the grant of relief under section 27 of the Hindu Marriage Act arose, need a notice at this stage.

There were matrimonial proceedings between the parties. The respondent - wife had instituted proceedings in the City Civil Court at Bombay for a decree of judicial separation as also for grant of maintenance. She also claimed relief under section 27 of the Act in respect her jewellery and other property. The appellant - husband had filed a petition seeking a decree of divorce on the ground of cruelty. Both those proceedings were disposed of by a common judgement, dated 21st April, 1987. The appellants petition for decree of divorce was dismissed while the respondent's petition for judicial separation was granted. Maintenance was also held payable to the respondent - wife from the date of the decree till the children of the parties 'attain the age of majority'. The respondent filed first appeal and the learned single judge of the High Court partly allowed the appeal and directed the appellant - husband to pay maintenance from the date of presentation of the petition and not from the date of decree only. The

appellant, on the basis of the decree of judicial separation obtained by the respondent, subsequently sought dissolution of marriage by a decree of divorce on the ground that there had been no resumption of cohabitation between the parties after the decree of judicial separation. A decree of divorce was, accordingly, granted by the matrimonial Court to the appellant on 27.2.1991. The matrimonial court, however, rejected the prayer of the respondent - wife for relief under Section 27 of the Act. The respondent preferred two appeals which came to be disposed of by the Division Bench by the common judgement, dated 30.4.1992. while disposing of the appeals, the Division Bench, inter alia opined that under Section 27 of the Act, the Court had jurisdiction to pass an order regarding the property, as mentioned in the section itself and the trial court, it was held by the Division Bench that the respondent-wife was entitled to an order under section 27 of the Hindu marriage Act in respect of the property claimed by her in Exhibit 'A' and made the order accordingly.

We have heard learned counsel for the parties and exclaimed the record.

The trial court, while dealing with the question of relief under Section 27 of the Hindu Marriage Act opined.

"In my opinion, the Court trying matrimonial causes, has no jurisdiction to deal with the property rights of the parties. Hence I have declined to determine the rights of the parties to a suit".

The learned Single Judge, while dealing with this aspect of the case, observed.

"Therefore in my view it is not possible to hold that the wife had established that those ornaments and the property, which she has claimed by schedule Exhibit 'A' were presented to her at or at any time of marriage or to show that this had become the joint property of both husband and wife. Similarly, accordingly to me there is nothing to establish the identity or the co-relation of the golden ornaments contained in the admission of husband and which were claimed by the wife and so called admission of the husband it is not possible to hold that she is entitled to claim the return of any property".

The learned Single Judgement then went on to hold:

"I concur with this and my view there is no evidence to prove that the property claimed by the wife has presented at or about the time of marriage and/or was belonging jointly to husband and wife".

The Division Bench while dealing with this aspect of the matter held:

"As regards the second head of conclusion recorded by the learned single Judge, the present appeal will have to be allowed and accordingly succeeds. We set aside

the order of the learned Single Judge whereby he has held that the matrimonial Court would have no jurisdiction to pass an order in relation to the remaining items of the property. For the reasons recorded by us in this judgement, there shall be a decree in terms of Exhibit 'A' at page 376 of the paper-book. The office shall accordingly draw up a decree in these terms.

Section 27 of the Hindu Marriage Act reads thus:

"Disposal of property-In any proceedings this Act, the court may make such provision in proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

On a plain reading of the section. it becomes obvious the Matrimonial Court trying any proceedings under the Hindu Marriage Act, 1955, has the jurisdiction to make such provision in the decree as it deems just and proper with respect to nay property presented "at or bout the time of marriage" which may belong jointly to both the husband and wife. This section provides an alternate remedy to the wife so that she can recover the property which is covered by the Section, by including it in the decree in the matrimonial proceedings, without having to take resources to the filling of a separate Civil Suit and avoid further litigation. In the instant case, we find that the wife had laid claim to certain items of jewellery and in her deposition. She had mentioned the items of jewellery which she had received "at or about the time of her marriage" and, particular, had mentioned the items of jewellery which were given to her by her father at the time of the marriage.

During the course of her depositing, the respondent-wife had stated:

"At the time of may marriage, my father had presented to men one gold necklace weighing 4 1/2 totals, one gold chain weighing about 1 1/2 totals, two gold finger rings, one gold nosering, one pair of earring, one budge, two patlya weighing 5 totals."

In her deposition, she had also mentioned about other items of jewellery and the property given to the parties at or about the time of marriage. The appellant submitted, that the Division bench could not have held the respondent entitled by the wife in Exhibit 'A' as there was no evidence to support her claim of the wife had not been seriously disputed during the cross-examination of the wife and, therefore, the Division Bench rightly granted her claim.

In our opinion, the courts have not gone into the question in its correct perspective. The trial court proceeded to negative the claim of the respondent-wife by holding that the court had no jurisdiction to deal with the property rights of the parties and gave no opportunity to the parties to lead evidence in support of their respective claims. The finding of the trial court clearly overlooked the provisions of Sections 27 of the Hindu Marriage Act which unmistakably vests the jurisdiction in the court to pass an order, at the time of passing a decree in a

matrimonial cause. In respect of the property presented, at or about the time of marriage, which may belong jointly to the husband and the wife. The learned single Judge also fell in complete error while concurring with the view of the trial court to say that there was no evidence on the record to show that the property claimed by the wife was presented to her at the time of her marriage. The learned single judge failed to take notice of the deposition of the respondent in that behalf. Moreover, the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after given to the parties before or after marriage also. So long as it is relatable to the marriage. the expression "at or about the time of marriage" has to be properly construed to includes such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "their property". Implying thereby that the property can be tracked to have connection with the marriage. All such property is covered by section 27 of the Act.

The High Court fell in complete error in directing a decree to be drawn up in favour of the respondent - wife in terms of exhibit 'A', treating as if the respondent - wife had established through evidence that the jewellery mentioned therein had been given to her at or about the time of her marriage which may, whereas the Division Bench was right in holding that order under Section 27 of the Act could be made by the trial court while dealing with matrimonial proceedings, to form a part of the decree in the matrimonial proceedings, but no decree with regard to the property could be made unless it was established by evidence that the property was covered by Section 27 of the Hindu Marriage Act. There has been, in our opinion, no proper trial of the issue relating to the grant of relief under Section 27 of the Hindu marriage Act, as claimed by the respondent-wife. We are, therefore, constrained to set aside the judgement of all the courts below relating to the relief claimed by the respondent-wife under Section 27 of the Hindu Marriage Act only and remit the matter to the Family Court to decide that issue in accordance with law. the parties be granted opportunity to adduce evidence, necessary to establish their respective cases before the Family court. The Family Court shall, thereupon, draw up a decree, accordingly. We are conscious that the decree of divorce has already been passed and any decree now to be made in respect of the property under Section 27 of the Hindu Marriage Act would be separate decree, but in the facts and circumstances of the case, when such a decree is made, it shall be treated to be a part of the decree of divorce already granted by the Family Court which has becomes final. Except holding that Section 27 of the Act is attracted to the fact situation in the instant case, we express no opinion on the merits of the claim laid by the wife and disputed by the husband. the claim of the respondent shall be decided independently by the family Court, uninfluenced by any observations made by us herein. the appeal succeeds to the extent records above. The learned Presiding Judge of the Family Court, Bandra, Bombay may either decide the issue himself or assign it to any other court of competent jurisdiction under him for its disposal in accordance with law in the light of the observation made by us. We request the learned Presiding Judge of the Family Court to decide the matter expeditiously. There shall however, tsbe, no order as to costs so far as this appeal is concerned.

JUDIS