



2025:KER:32891

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

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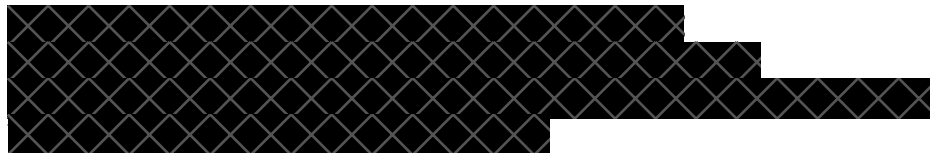
THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

MAT.APPEAL NO. 291 OF 2020

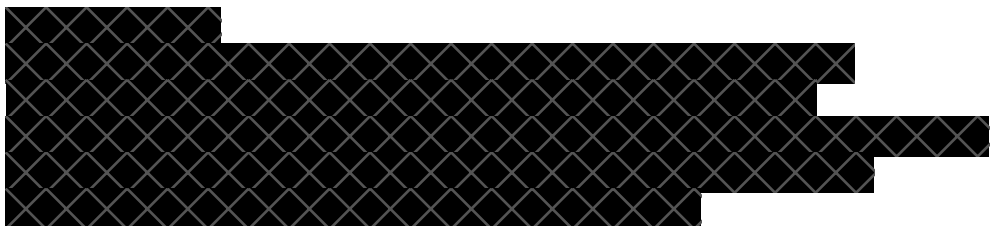
AGAINST THE JUDGMENT DATED 03.02.2020 IN OP NO.1301 OF
2016 OF FAMILY COURT, ERNAKULAM

APPELLANT/PETITIONER:



BY ADVS.
M.S.UNNIKRISHNAN
SRI.V.S.SREEJITH
SRI.K.SUNIL
SRI.RINU. S. ASWAN
SMT.M.ARDRA KRISHNAN
SMT.ALEENA MARIA JOSE
SMT.SUSAN JACOB (S-3481)

RESPONDENT/RESPONDENT:



BY ADVS.
SRI.SANTHEEP ANKARATH
SRI.J.RAMKUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
8.04.2025, THE COURT ON 11.4.2025 DELIVERED THE FOLLOWING:

CR

DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ

Mat.A.No.291 of 2020

Dated this the 11th April, 2025

JUDGMENT

M.B.Snehalatha, J

In this appeal, the appellant calls into question the correctness, legality and propriety of the judgment and decree of the Family Court, Ernakulam which dismissed her claim for return of gold ornaments and other personal belongings scheduled therein.

2. The parties shall be referred to by their rank in O.P.No.1301/2016.

3. The facts in brief are as follows:

The marriage between the petitioner and the respondent was solemnized on 09.09.2010. A child was born on 22.12.2011 in the said wedlock. At the time of marriage, petitioner was given 63 sovereigns of gold ornaments by her parents. A gold chain weighing 2 sovereigns was given to the respondent. Her cousins

had gifted her 6 sovereigns of gold ornaments. The entire gold ornaments of the petitioner excluding the gold ornaments for her regular wear are with the respondent. Initially, the ornaments were kept in an almirah in the bedroom of the petitioner and the respondent. On the 3rd day of marriage, ie on 12.9.2010, when she along with the respondent had gone to visit her house, the said gold ornaments were shifted to the almirah in the bedroom of the parents of the respondent for safe custody. After the marriage, respondent had made a demand for an amount of Rs.5 lakhs from her father for paying the balance amount payable towards the sale consideration of an apartment purchased by him. But the parents of the petitioner could not oblige to the said demand. Marital discord arose between them and their marriage went through rough weather. Petitioner is entitled to get back her 65½ sovereigns of gold ornaments described as A Schedule in the original petition from the respondent. Respondent is also liable to return the petition B schedule household articles.

4. The respondent filed counter denying the allegations levelled in the petition. He contended that he has not taken any gold ornaments of the petitioner and, therefore not liable to return any gold ornaments or other movables scheduled in the petition.

5. After trial, the learned Family Court dismissed the Original Petition on the ground that petitioner failed to establish her claim for return of gold ornaments and household articles.

6. The point for consideration in this appeal is whether the impugned judgment and decree warrant any interference by this Court.

7. Admittedly, the marriage of the petitioner with the respondent was solemnized on 9.9.2010 in accordance with the religious rites and ceremonies of Hindus. It is also an admitted fact that a child was born to them in the said wedlock.

8. Petitioner's case is that at the time of marriage, she was given 63 sovereigns of gold ornaments by her parents. A gold chain weighing two sovereigns was given to the respondent. In addition to the 63 sovereigns given to her by her parents, her relatives had also gifted 6 sovereigns of gold ornaments to her.

9. Petitioner, who was examined as PW1 has testified that except the thali chain, one bangle and two rings used for her regular wear, the rest of the gold ornaments were kept at the matrimonial home. Her version is that after the marriage, her gold ornaments were kept in an almirah in their bedroom. On the third day of the marriage, ie. on 12.9.2010, while she along with

the respondent went to her parental home, the gold ornaments were shifted to the almirah in the bedroom of the parents of the respondent. According to PW1, her gold ornaments are under the custody of the respondent and she is entitled to get back the gold ornaments weighing 65½ sovereigns detailed as A schedule in the Original Petition. Her case is that out of 65½ sovereigns, 59½ sovereigns are the gold ornaments given by her parents and six sovereigns are the gold ornaments gifted to her by her relatives at the time of marriage.

10. PW2 who is the father of the petitioner has also testified that at the time of marriage, he had given 63 sovereigns of gold ornaments to the petitioner and had also given a gold chain weighing two sovereigns to the respondent. He has also testified that their relatives had gifted 6 sovereigns of gold ornaments to the petitioner. According to him, the gold ornaments were purchased from 'Geeri Pai Jewellery', Broadway, Ernakulam by utilising the retirement benefits of himself and his wife.

11. The respondent in his counter statement has not disputed the case of the petitioner that at the time of marriage, her parents gave her 63 sovereigns of gold ornaments. He has also not disputed the case of the petitioner that on the wedding

day, her parents gave him a gold chain weighing two sovereigns.

12. The evidence on record would show that the parents of the petitioner were employed and they had sufficient financial capacity to give her 65 sovereigns of gold ornaments at the time of her marriage. Ext.A4 document fortifies the case of the petitioner that the amount deposited by her parents by way of fixed deposit in Premier Tyers Employees' Multi Purpose Cooperative Society Ltd. was utilized for purchasing the gold ornaments for the petitioner. There is no reason to disbelieve the version of the petitioner and her father that at the time of her marriage, she was given 63 sovereigns of gold ornaments and the respondent was given a gold chain weighing two sovereigns.

13. The gold ornaments and cash given at the time of marriage to a bride are considered as women's 'Sreedhan' which means her exclusive property. Unfortunately there are numerous cases where such valuable possessions are misappropriated by husband or in-laws. Due to private and often informal nature of such transfers, it becomes merely impossible for women to produce documentary evidence proving ownership or misappropriations. In such situation the courts have to rely on the principle of preponderance of probabilities to deliver justice. The

preponderance of probability refers to the greater likelihood of one event or fact over another. It is not about certainty or eliminating all doubts, but rather about weighing evidence to see which side presents a more probable scenario. In civil cases, the party bearing the burden of proof needs to show that their version of events is more plausible than the opposite party.

14. The gold given to a bride at the time of marriage is often kept by the husband or his family under the guise of safekeeping of family customs. The woman rarely gets a written record or receipt for such transfers and the woman's access to her own ornaments can be restricted. When disputes arise, especially in cases of domestic violence, dowry harassment or divorce, the woman may claim that her gold ornaments have been misused or never returned. However, since she seldom receives the list or acknowledgment of the items given to her, proving ownership becomes difficult. Courts have to understand this practical difficulty and cannot insist on rigid legal proof as in criminal cases. The inability to produce documentary evidence should not be a barrier to justice, especially in cases where the social and familial norms make such evidence hard to obtain. The Courts rely on the preponderance of probability to ensure that legal system remains

sensitive, fair and just. It upholds the principle that justice is not about rigid formalities but about recognising truth in its real context.

15. Respondent has no case that the petitioner had no gold ornaments at all. His case is that whatever gold ornaments petitioner had at the time of marriage, she took it along with her when she had gone to her parental home during pregnancy.

16. It is to be borne in mind that in the counter statement, respondent has stated that he has no knowledge about the whereabouts of the gold ornaments of the petitioner. But during cross examination a suggestion was put to PW1 that she had taken her entire gold ornaments with her while she had gone to her parental home during pregnancy stage.

17. The petitioner while examined as PW1 has testified that after their marriage, initially they were living at the residence of the respondent and thereafter they were shifted to a rented house at Poonkunnam, Thrissur and they were living there from 7.3.2011 to 11.5.2011. According to her, while living there on 30.4.2011 her pregnancy was identified through test and accordingly, on 11.5.2011 they came to Aluva and resided at

Aluva for three days and while residing there her parents came there and she went along with them to her parental home for pregnancy care. It is highly improbable that the petitioner took her gold ornaments along with her at the time when she had gone to the parental home in May, 2011 ie. at the initial stage of her pregnancy for pregnancy care. It is in evidence that subsequent to that, petitioner had not returned to her matrimonial home due to the marital discord between the spouses.

18. The learned counsel for the respondent would rely on Ext.B1 and contends that the petitioner had sent the said message to her sister-in-law Priyanka Vivek admitting that she took her gold ornaments along with her.

19. The learned counsel for the petitioner, on the other hand contended that Ext.B1 is not an admission made by the petitioner whereas it was a message wherein she was referring to the allegation levelled against her by her mother-in-law. Now we can have a look at Ext. B1 message, which reads as follows:

"On July 25 mummy told that Vinod has several financial burden, I am not at all adjusting with his financial issues, we tuk my gold back, I had no job they want a working daughter-in-law. Why I am not adjusting with Vinod. Vinod has to take care of his parents too, I am always thinking about my parent only & how to help my parents? etc.etc.

20. A reading of Ext.B1 would show that it is not an admission made by the petitioner as contended by the respondent whereas in the said e-mail, the petitioner was referring to the allegations levelled by her mother-in-law against her. In this context, it is also to be borne in mind that though the respondent would contend that the petitioner has taken her gold ornaments while she had gone to her parental home, respondent has not entered into the witness box to speak his case on oath. No reasons whatsoever have been offered by the respondent for abstaining himself from the witness box and offer for cross-examination. Therefore an adverse inference can be drawn against him that the case canvassed by him is untrue as held by the Hon'ble Supreme Court in *Iswar Bhai C.Patel alias Bachu Bhai Patel v. Harihar Behera and another* (1999 KHC 1076) and in *Vidhyadhar v. Manikrao and Ors.* (AIR 1999 SC 1441).

21. The finding of the learned Family Court that in Ext.B1 email, the petitioner has admitted that she has taken back her gold ornaments and therefore she is not entitled to get a decree for return of gold ornaments, is an incorrect finding. We cannot find favour with the finding of the Family Court that there are discrepancies in the total weight of the gold ornaments shown

in the petition and the total weight shown in Ext.A1 photo and for that reason also there is a cloud in her claim. Petitioner has categorically testified that she was given 63 sovereigns of gold ornaments by her parents and a gold chain weighing two sovereigns was given to the respondent. It is true that the petitioner has not adduced any evidence to substantiate her claim that, in addition to that she had another 6 sovereigns of gold ornaments gifted by her relatives. But the petitioner has succeeded in establishing that her gold ornaments, weighing 59 ½ sovereigns, are in the custody of the respondent and respondent has not returned it. Therefore, the petitioner is entitled to get a decree for return of 59 ½ sovereigns of gold ornaments from the respondent.

22. The next aspect for consideration is whether the petitioner is entitled to get back the B schedule household articles scheduled in the petition.

23. Though the petitioner has claimed return of B schedule household items from the respondent, neither in the original petition nor in the affidavit filed in lieu of examination in chief, she has not stated as to where those articles had been kept by her and she has not adduced any evidence on that score. There

is no evidence to show that the said household articles were misappropriated by the respondent. Therefore, petitioner is not entitled to get the relief sought in respect of petition B schedule movables.

24. In the result, Mat.Appeal allowed in part as follows:

a) Respondent shall return 59½ sovereigns of gold ornaments or its market value as on the date of return to the petitioner.

b) Parties are directed to suffer their respective costs.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B. SNEHALATHA,

JUDGE

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