



31/7/10

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HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal (Misc.) No.24 of 2010

Appellant
(Non-applicant)

Bhupendra Kumar Dahariya S/o
Vishwanath Dahariya, aged about 26
years, R/o Near Gattani High School,
Janjgir, Tahsil and District Janjgir
Champa (CG).

Versus

Respondent

Smt. Rakhi, aged about 23 years, W/o
Bhupendra Dahariya, at present R/o M-
816, Adarsh Nagar, Kusmunda, Tah.
Katghora, Dist. Korba (CG).

(First appeal under Section 19 (1) of the Family Courts Act, 1984)

DB: Hon'ble Mr. T.P. Sharma &

Hon'ble Mr. R.L. Jhanwar, J.J.

Present:-

Mrs. Uma Tiwari, counsel for the appellant.
None present for the respondent.

JUDGMENT (ORAL)

(Passed on 29th July, 2010)

T.P. Sharma, J.

1. By this appeal, the appellant has challenged the legality & propriety of the judgment & decree dated 7.1.2010 passed by the Judge, Family Court, Camp Court, Katghora, in Case No.2B/07, whereby the Judge, Family Court has decreed the suit for return of property under Section 27 of the Hindu Marriage Act, 1955 (in short 'the Act, 1955').
2. Judgment & decree are impugned on the ground that without any proof, the Judge, Family Court has decreed the suit and thereby committed illegality.
3. Brief facts necessary for disposal of this appeal are that parties are Hindus and legally wedded spouses. Their marriage has been dissolved by a decree of divorce. The respondent has filed the petition under Section 27 of the Act, 1955 for return of her *Stridhan* shown in Schedule "A" which has been denied by the present appellant. After providing opportunity of hearing to the parties, the Judge, Family Court has decreed the suit for return of the properties, especially shown in Schedule "A" as *Stridhan*.



4. After service of notice/summon to the respondent, she has not made her appearance.
5. We have heard learned counsel for the appellant, perused the judgment & decree impugned and record of the Family Court.
6. Learned counsel for the appellant submits that as per the petition of the respondent, she has claimed for return of her *Stridhan* which was her exclusive property under Section 27 of the Act, 1955 and the Judge, Family Court has directed to return of the alleged *Stridhan* of the respondent. In accordance with Section 27 of the Act, 1955, the Court below was not competent to pass any decree for return of *Stridhan*, although the Family Court was competent to decide and pass the decree of property belonging to the respondent as *Stridhan* under the provisions of the Family Courts Act, 1984 (in short 'the Act, 1984'), but not in terms of Section 27 of the Act, 1955.
7. In order to appreciate the arguments advanced on behalf of the appellant, we have examined the legal propositions and factual matrix of the case.
8. Admittedly, as per petition of the respondent, she has filed petition under Section 27 of the Act, 1955 for return of her *Stridhan*. Para 7 of the petition reads as under:-

"यह कि, अनावेदक दूसरी महिला से शादी कर दाम्पत्य जीवन व्यतीत कर रहा है, ऐसी स्थिति में आवेदिका का अनावेदक के साथ जीवन निर्वाह किया जाना संभव प्रतीत नहीं होता है तथा आवेदिका द्वारा अतिरिक्त जिला न्यायाधीश कटघोरा के समक्ष विवाह विच्छेद का प्रकरण लंबित है, ऐसी स्थिति में आवेदिका, अनावेदक से स्त्री धन को अपने कब्जे में प्राप्त करने हेतु यह आवेदन माननीय न्यायालय में प्रस्तुत करती है।"

9. The Judge, Family Court has specifically framed issue No.2 relating to entitlement of *Stridhan* which reads as under:-

"क्या आवेदिका श्रीमती राखी अपने पति अनावेदक मूपेन्द्र कुमार के साथ दि. 16.2.04 को विवाहोपरांत जो स्त्रीधन उसकी पत्नी को दिया गया जो कि स्त्रीधन आवेदन पत्र में अनुसूची "अ" में दर्शित है, उसे आवेदिका श्रीमती राखी, सभी स्त्रीधन को अपने मायके ले जा चुकी है ? यदि हाँ तो प्रभाव ? -प्रमाणित नहीं"

10. Clause (1) of para 22 of the judgment and clause (1) of the decree reveal that the Judge, Family Court has decreed the suit for return of the articles



shown in Schedule "A" which is as per issue and pleadings of the parties shown as *Stridhan*.

11. Scope of Section 27 of the Act, 1955 is limited and only property presented, at or about the time of marriage belonging to both the husband and the wife jointly, may be returned to any of the party. Section 27 of the Act, 1955 reads as under:-

"27. Disposal of property.-In any proceeding under this Act, the Court may make such provisions in the decree as it deems just and 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."

12. Section 27 of the Act, 1955 does not make the parties entitled for return of his or her exclusive property not belonging to both i.e. husband and wife, although the Family Court is competent to decide the suit relating to property of the parties of the marriage or of either of them in terms of Explanation (c) of sub-section (1) of Section 7 of the Act, 1984 which reads as under:-

"Explanation (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;"

13. Admittedly, the respondent was required to file civil suit for return of her property in terms of Explanation (c) of sub-section (1) of Section 7 of the Act, 1984, but she was not entitled for return of her *Stridhan* under the provisions of Section 27 of the Act, 1955.

14. While decreeing the suit for return of *Stridhan* under Section 27 of the Act, 1955, the Judge Family Court has committed illegality. The judgment & decree impugned are not sustainable under the law and same are liable to be set aside.

15. For the foregoing reasons, the appeal is allowed. Judgment & decree impugned are hereby set aside. Suit filed by the respondent under Section 27 of the Act, 1955 for return of *Stridhan* is dismissed. Parties shall bear their own costs.

B/-
Sd/-
T.P. Sharma
Judge

Sd/-
R.L. Jhanwar
Judge