

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 30TH DAY OF JUNE 2021 / 9TH ASHADHA, 1943

MAT.APPEAL NO. 616 OF 2012

AGAINST THE JUDGMENT IN OP(OS) NO.715/2010 OF FAMILY COURT,

ALAPPUZHA

APPELLANT/S:

N.BALAN, S/O.GOVINDAN,
AGED 74 YEARS, RESIDING AT VINOD BHAVANAM,
NADAKAVU MURI, PERINGALA VILLAGE,
KAYAMKULAM.

BY ADVS.
SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

RESPONDENT/S:

- 1 NISHA VINOD, W/O. VINOD B.,
SREEMANGALAM HOUSE, CHERUKUNNAM MURI,
THEKKEKARA VILLAGE, THEKKEKARA P.O.,
KURATHIKADU, MAVELIKKARA.
- 2 VINOD B., AGED 37, S/O. N. BALAN,
RESIDING AT VINOD BHAVANAM, NADAKAVU MURI,
PERINGALA VILAGE, KAYAMKULAM, NOW RESIDING
AT SREEMANGALAM HOUSE, CHERUKUNNAM MURI,
THEKKEKARA VILLAGE, THEKKEKARA P.O, KURATHIKADU,
MAVELIKKARA.

Mat. Appeal No.616/2012

-:2:-

BY ADVS.
SRI.B.BIPIN
SRI.R.REJI
SRI.M.V.THAMBAN
SMT.THARA THAMBAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
30.06.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

-:3:-

A.MUHAMED MUSTAQUE & DR.KAUSER EDAPPAGATH, JJ.

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Mat. Appeal No.616/2012

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Dated this the 30<sup>th</sup> day of June, 2021

**J U D G M E N T**

A.Muhamed Mustaque, J.

This appeal was filed by the second respondent in O.P.(OS).No.715/2010 on the file of the Family Court, Alappuzha, challenging a decree granted against him in a petition filed for recovery of 142 gold sovereigns or its value, Rs.3 lakh towards patrimony and return of household articles. The petition before the family court was filed by his daughter-in-law Nisha Vinod against the appellant and her husband. Her husband Vinod B., who was the first respondent remained ex parte before the family court. The decree was a joint decree against the appellant and Vinod. Vinod has not chosen to file an appeal. He remained absent before this Court also.

-:4:-

2. The parties are herein referred to as per their status before the family court for easy reference.

3. The petitioner before the family court married the first respondent on 14.6.1999. A child was born in the wedlock. The second respondent father-in-law of the petitioner, a Gulf returnee in the year 1994 appears to have been living happily and cordially with others till 2009. The second respondent's wife Ponnamma, died on 4.6.2010. One Sreedevi appears to have been taking care of Ponnamma till her death. Sreedevi appears to have developed some intimacy with the second respondent. During the life time of Ponnamma in the year 2009 itself, the second respondent filed a suit before the Munsiff Court, Kayamkulam, against his daughter, son (the first respondent) and son-in-law. In the year 2010, the first respondent and his sister Veena filed another suit against the second respondent and Sreedevi for injunction to restrain them from alienating the properties mentioned in the schedule therein. The petitioner also filed a petition under the Protection of Women from Domestic Violence Act, 2005 as against the second respondent and obtained

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a protection order that was subsequently set aside in the Cr1.Appeal filed by the second respondent.

4. The petitioner moved the Family Court alleging that she was having 125 sovereign gold ornaments at the time of marriage and these gold ornaments were misappropriated by the second respondent without the consent of the petitioner and her husband, the first respondent. It was alleged by her that a sum of Rs.3 lakhs was given as patrimony apart from the movable properties mentioned in 'C' schedule, to the second respondent, at the time of marriage.

5. As far as the pleadings would go to show that the gold ornaments were entrusted with the second respondent and to his deceased wife Ponnamma to keep the same in a locker in the presence of Jagadhamma, the sister of the deceased Ponnamma. This was immediately after the marriage. It was stated in the petition that a child was born on 22.07.2000. and he received 27 sovereigns as a gift and out of which 23 were entrusted to the 2nd respondent on 25.09.2000 to keep in a locker. It was alleged in the petition that the

-:6:-

petitioner was illtreated by the 2nd respondent demanding more dowry, car, etc. This was immediately after the marriage. It is alleged that on account of the illtreatment, the petitioner returned to her family house and, thereafter, she was taken to Bombay, where the first respondent was employed. At the time of filing the petition the first respondent was working in Saudi Arabia. It is stated in the petition that whenever the first respondent husband came down from abroad the petitioner along with the first respondent enquired about the gold ornaments and the second respondent gave a reply stating that it was kept in the locker.

6. As referred in the earlier paragraph, the present petition was moved in the backdrop of litigation between the second respondent with his own children.

7. The evidence in this case consists of oral evidence of PW1 the petitioner, PW2 her father, PW3 a relative of the petitioner and PW4 the Secretary of the SNDP branch. On the side of the second respondent, the second respondent was examined as CPW1, Manager of SBT was examined as CPW2 and the Postmistress of Peringala

-:7:-

Post Office as CPW3. Ext.X1 and Ext.X2 series were marked through CPW2, SBT Branch Manager. Ext.X3 was marked through the Postmistress. As seen from Ext.X3, a request was made by the first respondent to redirect all the postal articles addressed in the name of the first respondent to the address of the father of the petitioner. This request was made on 1.6.2010. The petition was filed before the family court by the petitioner on 9.7.2010. The Family Court relying upon the oral testimony of RW1, pointing out that his testimony lacks consistency and relying upon the oral testimony of PW1 to PW3, allowed the petition for recovery of 142 gold sovereign and other reliefs sought in the petition.

8. In matrimonial disputes, it is not easy to bring in any documentary evidence to establish entrustment and misappropriation. The Court will have to weigh all attendant circumstances. The Court will also have to weigh the oral testimony of parties to find the preponderance of probabilities in such circumstances. On a perusal of the pleadings and evidence, we find the family court erred in its

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finding. The family court overlooked certain crucial aspects involved in this matter, while analysing the oral evidence. These crucial aspects were admitted part of the pleadings and evidence. This clearly would outweigh the oral testimony of PW1 to PW3 regarding the entrustment and appropriation of gold ornaments and money by the second respondent. It is to be noted that the second respondent is having a case that the petitioner and the first respondent colluded together to establish case against the second respondent.

9. There cannot be much dispute regarding the possession of gold ornaments by the petitioner in as much as that Ext.P2 and other evidence would show that the petitioner was capable of possessing gold ornaments as claimed. The petitioner projected the entrustment of gold ornaments in the year 1999 and 2000. According to her, she was ill-treated immediately after the marriage, by the second respondent. The petitioner also put forward a case of estranged relationship with the first respondent. But she was not specific in regard to the year in which she developed estrangement with the first respondent. The second respondent all along denied entrustment of the gold ornaments. If the

-:9:-

petitioner had experienced ill-treatment immediately after the marriage, it is not possible to believe that she would wait till 2010 to demand the return of gold ornaments. The spate of litigation that followed in the year 2009 would show that bickerings had started in the year 2009 when Sreedevi came to attend bedridden Ponnamma. Sreedevi appears to have developed intimacy with the second respondent. Cases were filed by the second respondent against his own children and the petitioner also became parties to the proceedings to obtain a protection order to reside in the house where the second respondent was residing. This apparently shows that there appears to be a serious dispute between the second respondent and his children in regard to the property. They had a fear that the property will pass on to Sreedevi. The first respondent, immediately before filing the petition by the petitioner, issued a letter to the post office, to redirect all letter and documents addressed to him in the address of the second respondent to the petitioner's father's address. These all factors would show that the petitioner is a pawn in her husband's hand to institute a petition against the second

-:10:-

respondent. It is to be noted that the petitioner had not made any specific allegations against her husband in the petition. The first respondent was very active in the litigation as against his father, the second respondent. These litigation were immediately prior to the present petition. But he remained ex parte in the present proceedings. All these factors would clearly show that the petition was a result of collusive effort at the instance of the first respondent to fasten a liability on the second respondent and ultimately to proceed against his property.

10. In the absence of any worthy evidence of entrustment, in the background of the case, the oral testimony of the parties cannot be relied upon. The background of present litigation weigh against the interested oral testimony of PW 1 to PW3. We therefore, are of the view that the petitioner failed to prove entrustment of gold ornaments, patrimony or movable property to the second respondent. We note that the family court had not approached the issue in correct perspective. When there are overwhelming evidence to show about collusion between the petitioner and the first respondent, the family court cannot brush aside

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such evidence and rely upon oral testimonies of the parties. The circumstances as narrated above clearly establish a collusion. We, in such circumstances, are of the view that the impugned judgment has to be set aside as against the appellant. Accordingly, we allow this appeal. We make it clear that the decree granted as against the first respondent would remain. The parties are directed to suffer their respective costs.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

Sd/-

**DR.KAUSER EDAPPAGATH, JUDGE**