IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE SATHISH NINAN
&
THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN
THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947
MAT.APPEAL NO. 299 OF 2014
[AGAINST THE JUDGMENT DATED 31.10.2013 IN OP NO.1072 OF 2011 OF FAMILY COURT, NEDUMANGAD]

APPELLANT/RESPONDENT:

HARI S.V.
AGED 33 YEARS
S/O.SOMARAJ,HARI NIVAS,MUKKAMPALAVILA VEEDU,VAZHUTHOOR, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADVS.
SRI.V.JAYAPRADEEP
SRI.ABE RAJAN
SRI.SHANE WILFRED MORRIS

RESPONDENT/PETITIONER:

ANSY
D/O.LALITHA,AGED 25 YEARS,A.A NIVAS,THEKKUMKARA,KARIPOOR VILLAGE,NEDUMANGAD TALUK,THIRUVANANTHAPURAM.

BY ADV SRI.J.JAYAKUMAR

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 12.03.2025, ALONG WITH Mat.Appeal.300/2014, THE COURT ON 27.03.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

MAT.APPEAL NO. 300 OF 2014

[AGAINST THE JUDGMENT DATED 31.10.2013 IN OP NO.1058 OF 2010 OF FAMILY COURT, NEDUMANGAD]

APPELLANTS/RESPONDENTS:

1 **S.V.HARI**
AGED 33 YEARS
S/O.SOMARAJ, HARI NIVAS, MUKKAMPALAVILA VEEDU, VAZHUTHOOR, NEYYATTINKARA, THIRUVANANTHAPURAM.

2 **VASANTHAKUMARI**
AGED 56 YEARS
D/O.SARASWATHY, HARI NIVAS, MUKKAMPALAVILA VEEDU, VAZHUTHOOR, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADVS.
SRI.V.JAYAPRADEEP
SRI.ABE RAJAN
SRI.SHANE WILFRED MORRIS

RESPONDENTS/PETITIONERS:

1 **ANSY**
AGED 25 YEARS
D/O.LALITHA, A.A.NIVAS, THEKKUMKARA, KARIPOOR VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM-695 541

2 **ANCHIMA**
D/O.ANSY, A.A.NIVAS, THEKKUMKARA, KARIPOOR VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM-695 541

BY ADV SRI.J.JAYAKUMAR

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 12.03.2025, ALONG WITH Mat.Appeal. No.299/2014, THE COURT ON 27.03.2025 DELIVERED THE FOLLOWING:

SATHISH NINAN & SHOBA ANNAMMA EAPEN, JJ.

Mat.Appeal Nos.299 & 300 of 2014

Dated this the 27th day of March, 2025

J U D G M E N T

SHOBA ANNAMMA EAPEN,J:

The husband is the appellant in the above two appeals filed against the common judgment in O.P.Nos.1072/2011 and 1058/2010 of the Family Court, Nedumangad. Mat Appeal No.299/2014 is filed by the husband against the decree for dissolution of marriage, and Mat Appeal No. 300/2014 is filed against the decree declaring the wife as the absolute owner of item Nos.1 to 3 in Schedule "A" properties, and to return 24 sovereigns of gold ornaments or its present market value, ₹1,00,000/- given as pocket money, and ₹2,00,000/- as value of household articles. For the sake of convenience, the parties are referred to as husband and wife.

2. The brief facts of the case are as follows:-

The marriage between the parties was solemnised on 28.05.2009. A child was born in their wedlock.

According to the wife, 41 sovereigns of gold ornaments were given to her at the time of marriage. On the date of ‘Adukkalakanal’, a gold chain weighing 4½ sovereigns and a bracelet of 2½ sovereigns were given to the husband, and two gold bangles weighing one sovereign each were given to the husband's mother and sister, respectively. An extent of 50 cents of property was settled by her father in favour of the daughter and son-in-law. The wife claimed that 2.500 cents of property and house were purchased by selling 11½ sovereigns of gold ornaments. Further, adjacent property admeasuring 1.750 cents and house were purchased in the name of the wife and husband by the wife’s father by selling 15½ sovereigns of gold ornaments belonging to the wife. The wife alleges that out of 41 sovereigns of gold ornaments, she was left with only 14 sovereigns. All the gold ornaments were entrusted to her mother-in-law and sister-in-law and were not returned to her. It was also alleged that there were several incidents of harassment during her pregnancy, including demands for increased dowry.

Furthermore after being enrolled for post graduation, she was prohibited from writing her examinations and was also restricted from contacting her parents over the phone. Thus, she filed a complaint before the Women's Commission, Thiruvananthapuram and due to the interference of the Women's Commission, she was allowed to write the first semester examination. The husband allegedly prohibited her from pursuing her education. The wife further alleged that she was subjected to cruelty and physical assault by the husband. Consequently, a police case was registered at Nedumangad Police Station. Moreover, M.C.No.37/2010 was filed before the Judicial First Class Magistrate Court, Nedumangad under the Domestic Violence Act. The wife claimed declaration of title over the properties described as 'A' schedule item Nos.1 to 3, further sought for return of 24 sovereigns of gold ornaments or their present market value, ₹1 lakh given as pocket money and ₹2 lakh being the value of household articles given to the husband. Further, an amount of ₹50,000/- was also claimed towards delivery expenses.

3. The husband denied the entrustment of amounts by her father and also denied the allegation that the properties were purchased by selling the gold ornaments and with the money spent by his father-in-law. He contended that the properties were acquired using his own funds and therefore she was not entitled to claim ownership or declaration of title over the properties. He further denied the allegation of misappropriation of gold ornaments weighing 24 sovereigns. The allegation that she was prevented from writing the examination was denied. Instead claimed that he had not subjected her to any cruelty. He further stated that the wife had voluntarily left their matrimonial home and returned to the parental home.

4. The Family Court, after elaborate consideration of the evidence, decreed the original petitions, granting all except the prayer for Rs.50,000/- alleged to have been incurred for maternity expenses. Aggrieved by the same, the

husband has filed the above appeals.

5. We have heard Adv.Mr.Jayapradeep.V., the learned counsel for the appellant/husband and Adv.Mr.J.Jayakumar, the learned counsel for the respondent/wife.

6. First, we shall consider the appeal filed by the husband against dissolution of marriage. The marriage took place on 28.05.2009. The parties resided together only for 9 months and admittedly, they are living separately from 22.03.2010. It is the case of the wife that, immediately after marriage, the husband was harassing the wife claiming more dowry. The wife alleged that, after marriage, she was not permitted to continue with her MSc course. The husband always had an inferiority complex that he had studied only upto 10th standard. It is an admitted fact that she had approached the Women's Commission with a complaint stating that she was prevented from writing the M.Sc. examination. It is after the intervention of the Women's Commission

that she was permitted to write the examination. It was also her case that the husband was harassing her with abusive language and it is due to his cruelty that she had to leave the matrimonial home.

7. In the written statement the husband contended that when the wife came to know that she was pregnant, she was unhappy about it. However during cross examination, he admitted that his wife was happy when she came to know about the pregnancy. It reveals the character of the husband that he has no hesitation in giving false statements regarding his wife. The husband had raised an allegation against the father of the wife that he was a person of immoral character and he wanted his daughter to live with him throughout his life and that is the reason for all the problems that arose in the life of the husband and wife. It is clear from the evidence that the husband treated the wife with cruelty. He did not even permit her to write her examinations or pursue her higher studies which

ultimately resulted in intervention of the Women's Commission.

8. The couple lived together only for 9 months. False allegations made against the spouse amount to mental cruelty. In **Princy** v. **Varkey** [2000 (1) KLT 756] (FB), this Court has held that cruelty need not be of such a nature as to cause danger to life, limb or health. Causing a reasonable apprehension of such danger and inflicting mental agony is also cruelty. Though from 22.03.2010 the parties were living separately, the husband has not filed any petition for restitution of conjugal rights. It is clear from the evidence adduced that the wife is unwilling to continue the relationship with the husband due to the cruelty meted out to her. The marriage between the parties have irretrievably broken down. The emotional bond had become dry, and the warmth of their matrimonial relationship went increasingly missing and the marriage between the parties was dead. In such circumstances, if a decree of divorce

is not granted, the parties would be forced to endure unnecessary suffering, misery and emotional distress. The husband and wife have been living separate and apart for an extended period. We are of the opinion that the Family Court has rightly granted a decree for divorce to the wife. We are not inclined to interfere with the same.

9. Next, we shall consider the issue regarding realisation of money, gold and property. Firstly, as regards the money, according to the wife, an amount of ₹1,00,000/- was given to her as pocket money and she has claimed ₹2,00,000/- as the value of the articles given to her husband. The afore ₹1,00,000/- was given by the wife's parents at the time of marriage and an amount of ₹2,00,000/- is claimed by the wife, towards the value of the items described in Schedule 'B' which consists of 30 items of property. The wife had relied on Ext.A4, document to prove that her father had withdrawn an amount of ₹1,00,000/- on 22.04.2009 and Ext.A3 photograph

which shows the pocket money was received by the husband's uncle. The husband had denied the receipt of the amount of ₹1,00,000/-. Exts.A3 photograph, A4 copy of passbook and the testimony of PWs.2 and 3 would substantiate the case of the wife that the husband was paid an amount of ₹1,00,000/- as pocket money on the date of engagement. Hence, we are not inclined to interfere with the decree granted regarding the payment of ₹1,00,000/-.

10. As regards the claim of ₹2,00,000/- being the value of items in B Schedule, PW4- the driver of the vehicle had deposed that, on the date of marriage, he had delivered one almirah, one grinder, one mixie, one pressure cooker, one copper pot, several presentation articles to the house of the husband. He had also testified that on the same day, he had taken a godrej fridge to the house of the husband. Further, PW4 had further deposed that four months after marriage, he had taken a TV stand, computer table, computer etc. to the house of the

husband. During cross-examination nothing was brought out to discredit the testimony of PW4. Hence, the family court allowed the prayer for return of ₹2,00,000/-, being the value of items in B Schedule. We find no reason to interfere with the same.

11. Regarding the declaration of title over item Nos. 1 to 3 in A Schedule, it is the specific case of the wife that 11½ sovereigns of gold ornaments belonging to the wife was sold at Bhima Jewellery, Thiruvananthapuram and another ₹2,00,000/- given by the parents of the wife were utilised and 2½ cents of property with building was purchased on 03.08.2009 in the joint names of the wife and the husband. Further, according to the wife, the husband was not willing to reside in the above house and again another 15½ sovereigns of gold ornaments were sold at Bhima Jewellery on 05.09.2009 and another property admeasuring 1.750 cents with building was purchased and document was executed on

09.09.2009. It was the specific case of the wife that, though the name of the husband was shown in the documents he had not spent any amount for purchasing the property.

12. On the other hand, the husband claimed that the above properties were purchased in their joint names by utilising the amount of the husband, by availing loan from his department and also by selling the property belonging to the husband's mother. The husband has also claimed that his mother had obtained ₹3,00,000/- when his father died, who was an employee in the Railway department and by using that amount 2½ cents of property were purchased. He further stated that 1.750 cents of property and building was sold to his paternal uncle in 2007 and that amount was kept in the almirah, and with that amount the property was repurchased by him in 2009. Other than his contentions, no documents such as any bank statements or loan statement was produced by the husband to prove the transaction,

whereas the wife produced Ext.A14 to prove that 11½ sovereigns of gold ornaments were sold on 30.07.2009, Exts.A15 and A16 to prove that 2.500 cents of properties were purchased on 03.08.2009, Exts.A17 and A18 to prove that 15½ sovereigns of gold ornaments were sold on 05.09.2009 and another property admeasuring 1¾ cents with the building was purchased and document was executed on 09.09.2009. Further, Ext.A19 document was produced to prove that ₹81,000 and ₹16,000 were withdrawn on 05.09.2009 and 07.09.2009 respectively from the account of the father of the wife. Admittedly, the sale deed was executed on 09.09.2009. Satisfactory evidence was adduced by the wife to prove that the properties were purchased by selling her gold ornaments weighing 27 sovereigns as well as by utilising the amount of her father.

13. On appreciation of evidence, the Family Court has come to the conclusion that the wife is entitled for declaration of title over item Nos. 1,2

and 3 of Schedule A properties. We find that the declaration granted is on proper appreciation of facts and evidence. We do not find any reason to interfere with the same.

14. Finally, regarding the claims for return of gold ornaments, the wife has claimed that out of 51 sovereigns claimed, 27 sovereigns were utilised for purchasing the property and the claim is for 24 sovereigns of gold ornaments. It is the case of the wife that on the date of engagement, one sovereign of gold ornament was given to the husband. Further, on the date of marriage, she was adorned with 41 sovereigns of gold ornaments. She has further claimed that a gold chain of 4½ sovereigns and a gold bracelet of 2½ sovereigns were given to the husband on the date of the reception. It was further claimed that 2 gold bangles of 1 sovereign each were given to the mother-in-law and sister-in-law. The wife has also alleged that 27 sovereigns were sold for purchase of the properties. So, out of 41

sovereigns, she admits that 14 sovereigns were left. By adding the sovereigns given to the husband, mother-in-law and sister-in-law, she claims return of 24 sovereigns of gold ornaments.

15. The husband contended that he was not aware of the gold ornaments or its quantity, which were worn by the wife at the time of the marriage. According to the husband, all the gold ornaments were handed over to her father immediately after the marriage. During cross-examination, the husband who was examined as CPW1 has admitted that 26 sovereigns of gold ornaments were sold for the purchase of the properties. Upon examining Ext A5 marriage photos, it is seen that the wife is adorned with a substantial quantity of gold ornaments. Ext A6 document shows that the gold ornaments were purchased on 04.04.2009. Satisfactory evidence had been adduced by the wife, by adducing evidence as PW1 and produced Exts.A2, A7, A22, A23 and A24 in support of her claim. The testimony of the wife is

more reliable and her evidence that she was having 51 sovereigns of gold ornaments is to be believed.

16. However, the family court has found that the wife is entitled for the return of 24 sovereigns of gold ornaments. The ornaments which the wife would have been wearing while she left the matrimonial home was not considered. The wife has stated that she was not permitted to leave the house or to call the parents over telephone. However, she found shelter in the police station on 22.03.2010 and it is, as per the intervention of the police, that she could reach her parental home. Deducting 4 sovereigns of gold ornaments which would have been with her for her use, we hold that the wife is entitled for return of only 20 sovereigns of gold ornaments. The judgment of family court is liable to be modified to that extent.

In the result, Mat.A.No.299 of 2014 is dismissed. Mat.A.No.300 of 2014 is partly allowed. The wife is entitled to recover 20 sovereigns of

gold ornaments or its present market value within a period of one month, in default of which, the wife will be entitled to realise the same from the husband personally and from his assets, both movable and immovable. The judgment and decree of the Family Court is modified to the extent as above. No costs.

sd/-

SATHISH NINAN
JUDGE

sd/-
SHOBA ANNAMMA EAPEN
JUDGE

MBS/

APPENDIX OF MAT.APPEAL 300/2014

APPELLANTS' ANNEXURES:-

Annexure A1	**JUDGMENT IN CC NO. 380/2011 OF JFMC-I, NEYYATINKKARA**