

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

and

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 24TH DAY OF SEPTEMBER 2020 / 2ND ASWINA, 1942

Mat. Appeal. No. 358 OF 2019

AGAINST THE ORDER IN OP 2199/2017 DATED 11-01-2019 OF FAMILY COURT, TIRISSUR

APPELLANT/2nd PETITIONER:

SHEELA.K.K.,
AGED 52 YEARS

D/O. K.A. KUMARAN, KURUMBOOR (H) 3721/A, 10TH CROSS
13B MAIN, H.A.L., II STAGE, BANGLORE - 560 008

BY ADV. SRI.S.K.BALACHANDRAN

RESPONDENT/RESPONDENT:

N.G.SURESH,
AGED 58 YEARS
S/O. N.S.GANGADHARAN, NANDIYIL HOUSE, SNEHA
KARIYAM, SREEKARYAM P.O., THIRUVANANTHAPURAM, NOW
TAKING REST AT KARUNA SAI, VELLANAD P.O.,
THIRUVANANTHAPURAM - 695 043

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ORDERS ON
16.09.2020, THE COURT ON 24.09.2020 PASSED THE FOLLOWING:

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"C.R."

A.M. SHAFFIQUE, SUNIL THOMAS & GOPINATH P., JJ.

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Dated this, the 24th day of September, 2020

Shaffique, J.

By reference order dated 13/11/2019, the above matter has been referred for the consideration by the Full Bench. The question involved is whether trust created by a wife entrusting her property to her husband gets extinguished after the dissolution of marriage and whether she can initiate proceedings invoking section 10 of the Limitation Act, 1963, without any limitation of time. Reference is also made to the judgment of another Division Bench in ***Bindu K.P. v. Surendran C.K.*** [2018 (2) KHC 1] wherein it was held that the claim of the wife or ex-wife for a dowry is not barred by any length of time.

2. In ***Bindu K.P's*** case (supra), this Court held at paragraph 12 as under:-

"12. There is another reason to state that the family court did go wrong. Sec.6(1) of the Dowry Prohibition Act specifically states that pending transfer of the dowry to the woman, the person holding it shall hold it in trust for the

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benefit of the woman. Thus, a statutory trust is created under Sec.6(1) of the Dowry Prohibition Act. In view of the creation of the statutory trust, Sec.10 of the Limitation Act applies. Therefore the claim of the wife or ex-wife for her dowry is not barred by any length of time. Even if it is accepted for the sake of argument that the wife should return the 'tali' or any other property presented to her by her husband, no such statutory trust is created. Therefore Sec.10 of the Limitation Act has no application. The marriage was in 1996. The suit came in 2004. Therefore the claim, if at all maintainable, was hopelessly barred by the law of limitation."

3. The learned counsel Sri.S.K.Balachandran appearing on behalf of the appellant has placed before us the following judgments:-

(i) ***Swapna v. Thankavelu*** (1990 (2) KLT 604):- In the above case, a learned Single Judge of this Court held that when valuable articles are entrusted by the wife to the husband for safe custody, the husband remains in the position as a trustee who is bound to account to the wife all her properties at any time when she demands. The aforesaid judgment was delivered following the Apex Court judgment in ***Pratibha Rani v. Surajkumar and another*** (AIR 1985 SC 628). It was further held that if the husband is a trustee, the wife is entitled to follow the

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property in the possession of the trustee, and S.10 of the Indian Limitation Act would apply.

(ii) ***Chacko v. Annamma*** (1993 (1) KLT 675):- In this case, the Division Bench of this Court approved ***Swapna's case*** (supra). In the above case, on a detailed analysis of the relevant provisions including S.10 of the Limitation Act and the provisions of the Trusts Act, overruling an earlier judgment in ***Annamma v. Thressiamma*** (AIR 1972 Ker. 170), it was held that there is a creation of trust in respect of stridhanam property and therefore S.10 applies. Paragraphs 28 to 30 are relevant, which reads as under:-

"28. It is profitable to note that the trusts are divided into two broad classifications, viz., simple trust and special trust, according to the nature of the duty imposed on the trustee. A simple trust is a trust in which the trustee is a mere repository of the trust property, with no active duties to perform. Such a trustee is called a passive or, more frequently, a bare trustee see Underbill's Law of Trusts and Trustees. In a case where A devised property to B in trust for C there is a simple trust, as the only duty which B has to perform is to convey the legal estate to C if so requested. Here B is a passive or bare trustee. This trust is also an express trust. We are of opinion that in the case of payment by a father of a girl to the prospective father in law or the prospective husband is a simple trust. The only duty of the

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husband to convey the legal estate of the property to the girl. Though it is a simple trust, it is an express trust and we are of opinion that the specific purpose denoted in S.10 of the Limitation Act can be understood in a meaningful way that the only duty of the husband or the father in law is to convey the legal estate of the trust property to the beneficiary, the girl (wife), if so requested. So the conditionality of the specific purpose specified in the Act is satisfied. It cannot be said that the confluent of circumstances would negative the idea that the trust created in the matter of payment of stridhanam is not in an express trust, but only an implied or resulting trust.

29. It is difficult for us to agree the observations contained in AIR 1972 Ker. 170 that S. 10 of the Limitation Act is not applicable in the case of recovery of the amount paid as stridhanam

30. In 1990 (2) KLT 604 (Swapna v. Thankavelu), Justice Krishnamoorthy, following the decisions reported in AIR 1985 SC 628 (Pratibha Rani v. Suraj kumar and another) and 1989 (1) KLT 636 (Maniyamma v. Abdul Rassak), held that the husband is in the position of a trustee so far as the ornaments and utensils entrusted to him by the wife are concerned and under S.10 of the Indian Limitation Act there shall not be any limitation for such a suit by the wife against husband. Of course, His Lordship Justice Krishnamoorthy did not discuss the question whether an express trust is necessary to attract S.10 of the Limitation Act. But the learned Judge has followed AIR 1985 SC 628 and 1989 (1) KLT 636. In AIR 1985 SC 628, the learned Judges were considering a question under Ss. 405 & 406 of the Indian Penal Code in regard to stridhanam property of a wife. The

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court found that all the ingredients of the offences under S.405 of the Indian Penal Code have been proved in the case. In the majority judgment, Fazal Ali, J. speaking for himself and Sabyasachi Mukherji, J. observed that it cannot be said that upon a woman entering the matrimonial home the ownership of stridhanam property becomes joint with her husband or his relations. Even if the stridhanam property of a married woman, is placed in the custody of her husband or in laws they would be deemed to be trustees and bound to return the same if and when demanded by her. The Supreme Court overruled the decision reported in AIR 1982 Punjab & Haryana 372 (Vinod Kumar v. State of Punjab & Haryana and another). The above decision, of course, has laid down very clearly that the stridhanam property in the hands of the husband or in laws, should be deemed to be trust property in the hands of the husband or in laws. Whether it is an express trust or not was not a question which came up for consideration before the Supreme Court in this case."

(iii) In **Belcita Vincent Gomez v. Vincent Gomez** (2013

(4) KLT 890), yet another Division Bench of this Court followed the law laid down in **Chacko's case** (supra).

(iv) In **Bhattacharjee v. Sarathi Choudhury** [2015 (4) KLT 999 (SC)], while considering the impact of S.12 of the Protection of Women from Domestic Violence Act, 2005, the Apex Court held that as long as the status of the aggrieved person remains, and the stridhanam remains in the custody of the husband, the wife

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can put forth a claim u/s 12 of the Act.

4. The question involved in the above reference is that, when there is a change in circumstances between the spouses, especially when there is a dissolution of marriage and substantial time had elapsed, whether the trust created between them would be extinguished.

5. S.10 of the Limitation Act reads as under:

"10. Suits against trustees and their representatives.—

Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Explanation.—For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof."

6. It is settled law and as laid down in the judgments aforesaid, when the wife entrusts with the husband any property belonging to her, a trust is created and the husband is bound to return the same to his wife. If the same is not returned, the wife

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has a right to demand the same by filing a suit or as in the present case, file an application before the Family Court or take other necessary steps under the relevant statutes in force. When S.10 of the Limitation Act indicates that there is no limitation for initiating any such action, in the absence of any other statute providing for a limitation, the trustee cannot take a contention that he shall not return the trust property on account of any period of limitation. The question posed is, when the relationship between the parties gets deranged and results in divorce, whether the trust gets extinguished and the divorced wife would be entitled to invoke S.10 of the Limitation Act and file a suit at her will and pleasure at any point in time. In such an event, the questions to be considered are (i) whether a trust had been created at any point of time, (ii) if a trust has been created and the husband remains in the position of a trustee, whether it gets extinguished on the dissolution of marriage or under any other circumstances.

7. U/s 77 of the Indian Trusts Act, 1882, a trust gets extinguished only under certain circumstances. S.77 reads as under:

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"77. Trust how extinguished.-- A trust is extinguished--

- (a) *when its purpose is completely fulfilled; or*
- (b) *when its purpose becomes unlawful; or*
- (c) *when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or*
- (d) *when the trust, being revocable, is expressly revoked."*

8. Therefore, unless any of the eventualities as mentioned u/s 77 takes place, which of course is a question of fact to be decided on a case to case basis and once a trust is created, it continues to operate, even though there is a dissolution of marriage. However, in an instance where there is an agreement between the parties settling the obligations arising from the trust, it gets fulfilled in terms of S.77(a). We do not think that we should narrate various circumstances which may come u/s 77 of the Indian Trusts Act as it has to be decided on a case to case basis. Therefore, a trust does not get extinguished unless any such eventuality in terms of S.77 arises.

9. As per S.6 of the Dowry Prohibition Act, 1961, when a statutory trust is created in respect of dowry, the principle aforesaid shall apply.

10. In the case of ornaments which are given in the form of dowry, definitely, a statutory trust is created. Even otherwise, if

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the ornaments owned by the wife do not form part of the dowry and if there is an entrustment of gold ornaments by the wife to the husband or his parents, a trust gets created, in which event, the trustee or trustees, as the case may be, are liable to return the same and there is no limitation for claiming the same by the wife/divorced wife.

In the light of the aforesaid discussion, we are in full agreement with the law laid down in **Chacko's case** (supra) and we uphold the view expressed in **Bindu K.P.'s case** (supra). The Registry shall place the appeal for hearing before the appropriate court.

Sd/-

A.M. SHAFFIQUE

JUDGE

Sd/-

SUNIL THOMAS

JUDGE

Sd/-

GOPINATH P.

Rp

True Copy

JUDGE

PS to Judge