



HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (MAT) No.40 of 2022

*(Arising out of judgment dated 23-12-2021 passed by the Judge,
Family Court, Ambikapur, Distt. Surguja in Civil Suit No.216A/2018)*

Order reserved on: 5-5-2023

Order delivered on: 4-7-2023

Babulal Yadav, S/o Ramkesh Yadav, aged about 25 years, R/o Beside
Ashish Kirana Dukan (Jhiropara), Village Sasori, Police Station Lundra,
Distt. Surguja (C.G.)

(Non-applicant)
---- Appellant

Versus

Sonu Yadav, W/o Babulal Yadav, aged about 25 years, R/o Village Kot,
Post Lamgaon, Police Station Lundra, Distt. Surguja (C.G.)

(Applicant)
---- Respondent

For Appellant: Mr. Sanjay Pathak, Advocate.
For Respondent: Mr. A.K. Prasad, Advocate.

Full Bench: -

Hon'ble Mr. Ramesh Sinha, CJ,
Hon'ble Mr. Sanjay K. Agrawal and
Hon'ble Mr. Deepak Kumar Tiwari, JJ.

C.A.V. Order

Sanjay K. Agrawal, J.

1. Finding conflict between the judgments rendered by Division Bench of this Court in FAM No.61/2016 (**Smt. Devika Joshi v. Shri Deepak Joshi**¹), decided on **22-7-2016**, holding that "independent suit under Section 27 of the Hindu Marriage Act,



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1955 (for short, 'the Act of 1955') would be maintainable for return of *stridhan*" and another Division Bench of this Court in the matter of **Smt. Babita alias Gyatri v. Modprasad alias Pintu Kheersai Patel and others**² holding that "application for return of *stridhan* under Section 27 of the Act of 1955 is not maintainable", Division Bench of this Court while hearing this F.A.(MAT) No.40/2022 preferred against the judgment & decree dated 23-12-2021 passed by the Family Court, Ambikapur in Civil Suit No.216A/2018, has referred the matter to Hon'ble the Chief Justice to be placed before larger Bench to answer the following stated question: -

"Whether the independent petition under Section 27 of the Hindu Marriage Act, 1955 for return of *stridhan* would be maintainable before the family Court or not?"

2. Pursuant to the order of Hon'ble the Chief Justice (one of us), the matter has been placed before us for consideration. In order to answer the reference, it would be appropriate to notice the two judgments of this Court leading to the conflicting opinion and further leading to the reference before us: -
3. In **Smt. Devika Joshi** (supra), Division Bench of this Court dealing with the issue and relying upon the decision of the Supreme Court in the matter of **Pratibha Rani v. Suraj Kumar and another**³ has held that Section 7 of the Family Courts Act, 1984 (for short, 'the Act of 1984') provides alternative remedy to

² AIR 2018 Chhattisgarh 40

³ (1985) 2 SCC 370



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the wife to recover *stridhan* by a properly constituted suit and an independent suit under Section 27 of the Act of 1955 is, thus, maintainable for which the Family Court has been conferred jurisdiction under Section 7(1) read with Explanation (c) of the Act of 1984, and it has been observed as under: -

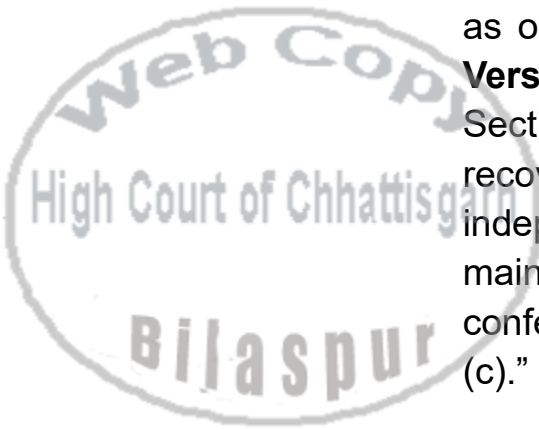
“7. The subject application though captioned to be an application under Section 7(1) Explanation (c) of the Family Courts Act, 1984, in essence it is a petition under Section 27 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955,') for return of the *stridhan*. Though Section 27 is couched in the language as if it can only be moved in a pending proceeding, however, as observed by the Supreme Court in **Pratibha Rani Versus Suraj Kumar and another, 1985 (2) SCC 370**, Section 7 provides alternative remedy to the wife to recover the *stridhan* by a properly constituted suit. An independent suit under Section 27 is, thus, maintainable for which the Family Court has been conferred jurisdiction under Section 7(1) Explanation (c).”

4. Thereafter, another Division Bench of this Court in **Smt. Babita alias Gyatri** (supra) again considering the issue with reference to return of *stridhan* and relying upon the decisions of the Supreme Court and the M.P. High Court in the matters of **Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam**⁴ and **Manish Nema v. Sandhya Nema**⁵, respectively, and also noticing the decision rendered by this Court in FAM No.5/2008 (**Sanjay Kumar Manu v. Shrimati Urmila Manu**⁶) has held that application for return of *stridhan* under Section 27 of the Act of

4 AIR 1997 SC 3562

5 AIR 2009 MP 108

6 (2011) 1 Cg LJ (SN) 28 (Chh)





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1955 would not be maintainable, when no other matrimonial proceeding between parties has ever been decided or pending. It was further held that for recovery of *stridhan*, the Family Court dealing with divorce proceeding under the Act is not competent to decide the issue and independent suit claiming return of *stridhan* would be maintainable in accordance with Section 7 of the Act of 1984. It was held in paragraph 10 of the decision in **Smt. Babita alias Gyatri** (supra) as under: -

“10. A Division Bench of Madhya Pradesh High Court in the matter of Manish Nema v. Sandhya Nema, reported in 2009 (2) MPHT 267 : (AIR 2009 MP 108), has held that relief under Section 27 of the Act seeking Court’s direction for return of Streedhan can be obtained even in a subsequently instituted proceeding, after disposal of the matrimonial proceeding. This judgment has been pressed into service by the learned counsel for the appellant to canvass that an independent proceeding under the Act is maintainable. However, on a complete reading of the judgment, we find that decision is in sink with the law laid down by the Supreme Court in Balkrishna Ramchandra Kadam (AIR 1997 SC 3562) (supra), inasmuch as a subsequent application under Section 27 of the Act for return of Streedhan would be maintainable after a previously instituted matrimonial proceeding has been decided between the parties. However, the judgment nowhere lays down the proposition that a proceeding commenced for the first time between the parties in form of application under Section 27 is maintainable even in a case where no other matrimonial proceeding has ever been initiated, decided or pending between the parties.”

5. In order to answer the reference, it would be appropriate to notice the background in which the Family Courts Act, 1984 came to be





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enacted. The Family Courts Act, 1984 was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith by adopting an approach radically different from that adopted in ordinary civil proceedings. Section 2(d) of the Act of 1984 defines, "Family Court" means a Family Court established under Section 3 of the Act. Section 3(1) states, for the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification, shall, as soon as may be after the commencement of this Act, established for every area in the State comprising of city or town whose population exceeds one million, a Family Court; may establish Family Courts for such other areas in the State as it may deem necessary. By virtue of Section 7 of the Act of 1984, a Family Court shall have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation attached to sub-section (1) of Section 7. Thus, the provisions of the Act, clearly demonstrate that the Family Court, a creature of statute, has been vested with power to adjudicate and determine the disputes between the parties which fall within the scope and ambit of Explanation to Section 7(1). The persons, who are appointed as Judge of the Family Court, perform all





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duties and functions which are akin to the functions being performed by the Presiding Officer of a Civil or a Criminal Court, though to a very limited extent. The expression 'Judge' under Section 2(a) of the Act means the Principal Judge / Additional Principal Judge or other Judge of a Family Court. The Presiding Judges of the Family Courts perform all the different statutory functions and decided the causes in accordance with the provisions of the Act.

6. The primary object and duty of the Family Court Judges is to endeavour and persuade the parties in arriving at a settlement in respect of the suit or proceedings, in which it may follow such procedure, as it may deem fit. The essential features of 'Court' are noticed in Family Court. Once these essential features are satisfied, then it will have to be termed as a 'Court'. The Presiding Officers of Family Courts are performing judicial and determinative functions and, as such, are Judges. The conclusion is therefore inevitable that Family Court constituted under Section 3 has all the trappings of a Court and, thus, is a Court and the Presiding Officer, that is, Judge of the Family Court is a 'Judge' though of limited jurisdiction. (See **S.D. Joshi and others v. High Court of Judicature at Bombay and others**⁷.)

7. At this stage, it would be appropriate to notice Section 7(1) of the Act of 1984 and Explanation (c) attached to it, which state as under: -

7 AIR 2011 SC 848



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“7. Jurisdiction.—(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

*Explanation.—*The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

xxx xxx xxx

xxx xxx xxx

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

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx”

8. By virtue of Section 8 of the Act of 1984, where a Family Court has been established for any area, no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section; no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procure, 1973 (2 to 1974);





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and every suit or proceeding of the nature referred to in the *Explanation* to sub-section (1) of section 7 and every proceeding under Chapter IX of the CrPC, shall stand transferred to such Family Court on the date on which it is established. As such, from the date of establishment of Family Court, the Family Court will exercise exclusive jurisdiction over every suit or proceeding of the nature referred to in the *Explanation* to sub-section (1) of Section 7 of the Act of 1984. *Explanation (c)* to Section 7(1) of the Act of 1984 provides that the suits and proceedings referred to in sub-section (1) is a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. It refers to a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. By virtue of *Explanation (c)* to sub-section (1) of Section 7 of the Act of 1984, it may be either the property belongs to the individual either of the parties to a marriage or held by them jointly.

9. Their Lordships of the Supreme Court in the matter of **K.A. Abdul Jaleel v. T.A. Shahida**⁸ while considering the meaning of *Explanation (c)* to sub-section (1) of Section 7 of the Act of 1984 i.e. the words “a suit or proceeding between the parties to a marriage”, held that it cannot held as “parties to a subsisting marriage” as it would lead to miscarriage of justice, it cannot be read as only parties to the subsisting marriage and it also

8 (2003) 4 SCC 166



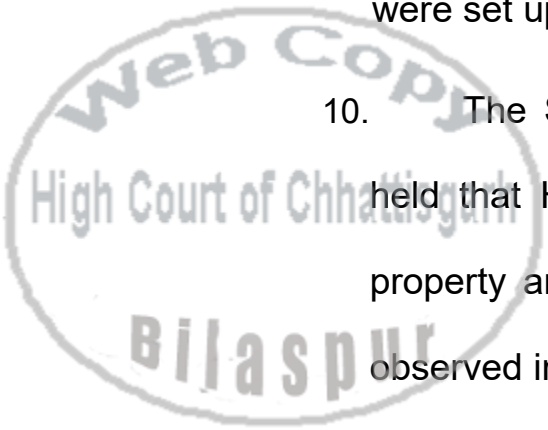
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includes divorced parties. It has further been held that the wording “disputes relating to marriage and family affairs and for matters connected therewith” must be given a broad construction. Their Lordships while dealing with Explanation (c) to sub-section (1) of Section 7 of the Act of 1984 held that it is well settled that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed and the restricted meaning if ascribed to Section 7 Explanation (c) of the Act would frustrate the object wherefor the Family Courts were set up.

10. The Supreme Court in **Pratibha Rani** (supra) has clearly held that Hindu married woman is absolute owner of *stridhan* property and can deal with it in any manner she likes. It was observed in paragraphs 7, 28 & 31 of the report as under: -

“7. It is, therefore, manifest that the position of stridhan of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes - she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt.

28. To sum up, the position seems to be that a pure and simple entrustment of stridhan without creating





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any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property.

31. We are clearly of the opinion that the concept of stridhan property of a married woman becoming a joint property of both the spouses as soon as she enters her matrimonial home and continues to be so until she remains there or even if there is a break in the matrimonial alliance, is in direct contravention of Hindu Law of Sadayika which has been administered since more than a century by High Courts, Privy Council as also this Court. By a pure and simple figment of the fertile imagination the Judges in *Vinod Kumar's* case seem to have rewritten the law of criminal breach of trust contained in Sections 405 and 406 IPC so as to carve out an imaginary exception to the application of the Penal Code. A more tragic consequence of the view taken by the High Court is that even if there is a break in the matrimonial alliance and the wife wants her husband to return her exclusive property and he refuses to return, even then the provisions of Section 406 IPC would not apply. It is an extreme travesty of justice for a court to say that whenever a married woman demands her stridhan property from her husband she should be driven to the dilatory process of a civil court and her husband would be debarred from being prosecuted by a criminal court. By a strange and ingenious process of holding that such an





act of a husband does not attract the provisions of the Penal Code, as the property being joint there is no question of the husband being a trustee or holding the same in a fiduciary capacity. Such a view, in our opinion, is not only contradictory but-what the High Court has said before regarding the applicability of Section 27 of the Hindu Marriage Act and the nature of stridhan as referred to above-is also neither in consonance with logic and reason nor with the express provisions of the Penal Code and seems to us to be inspired by a spirit of male chauvinism so as to exclude the husband from criminal liability merely because his wife has refused to live in her matrimonial home. We are indeed surprised how could the High Court, functioning in a civilised and socialistic society such as ours, play havoc with judicial interpretation of an important branch of law.”

11. The principle of law laid down in **Pratibha Rani** (supra) was reiterated by three-Judge Bench of the Supreme Court in the matter of **Rashmi Kumar (Smt) v. Mahesh Kumar Bhada**⁹ and their Lordships considered the meaning and nature of *stridhan* and held that wife is absolute owner of *stridhan* property. It is not the joint property of the wife and the husband. It was observed as under:-

“10. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property

⁹ (1997) 2 SCC 397



as owner thereof.”

Their Lordships further held that *stridhan* property is the exclusive property of the wife on proof that she entrusted the property or dominion over the *stridhan* property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It was observed as under:-

“13. Thus when the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property or wilfully suffers any other person to do so, he commits criminal breach of trust. The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406, IPC with sentence for a period upto three years or with fine or with both, are: [i] entrusting any person with property or with any dominion over property; [ii] the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all it imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The





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ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In *Pratibha Rani's* case, the majority has extensively considered the words "entrustment" of and "dominion" over the property. All the case-law in that behalf was exhaustively considered obviating the necessity to tread once over the same. In order to establish entrustment of dominion over the property, both the majority and minority relied on in particular the judgment of this Court in *Velji Raghavji Patel v. State of Maharashtra* [(1965) 2 SCR 492] wherein it was held that in order to establish entrustment of dominion over the property to an accused person, mere existence of that person's dominion over the property is not enough. It must be further shown that his dominion was the result of entrustment. The question therein pertained to the entrustment with the dominion over the partnership property by one partner to the other. It was held that the prosecution must establish that the dominion over the assets or particular assets of the partnership was by a special agreement between the parties. The property of the partnership being a partnership asset, every partner has a right to or a dominion over it. It was held that special agreement was necessary to constitute an offence of criminal breach of trust defined under Section 405, IPC. In view of the finding that stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It is always a question of fact in each case as to how property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. No absolute or fixed rule of universal application can be laid down in that behalf. It requires to be established by the complainant or the prosecution, depending upon





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the facts and circumstances of the case, as to how and in what manner the entrustment of the stridhana property or dominion over her stridhana came to be made to the husband or any other member of the family or the accused person, as the case may be. We are in respectful agreement with the majority view in Pratibha Rani's case and consequently requires no reconsideration.”

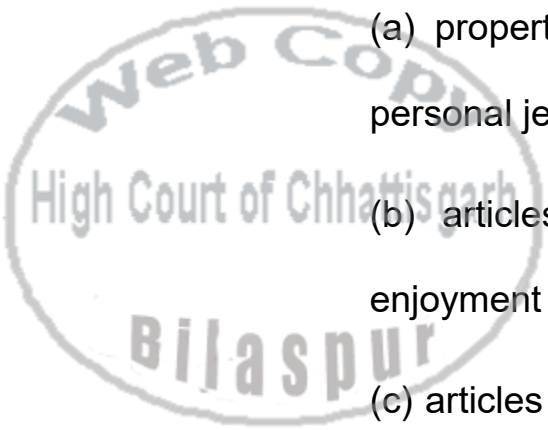
12. As such, their Lordships of the Supreme Court in **Pratibha Rani** (supra) have pointed out pure and traditional presents given to a bride in a Hindu wedding which may be divided into three categories, viz.,—

(a) property intended for exclusive use of the bride, e.g., her personal jewellery, wearing apparel, etc.,

(b) articles of dowry which may be for common use and enjoyment in the matrimonial home, and

(c) articles given as presents to the husband or the parent-in-law and other members of his family.

13. In **Pratibha Rani** (supra), their Lordships were concerned with the question whether there can be a criminal prosecution of a husband, who did not return the articles, which were *stridhan* of the wife under Section 405 of the IPC. While answering the question in affirmative, their Lordships of the Supreme Court have repelled the contention that the concept of *stridhan* has been abolished because of Section 27 of the Hindu Marriage Act, 1955 and Section 14 of the Hindu Succession Act, 1956.





14. Thus, by virtue of Explanation (c) to sub-section (1) of Section 7 of the Act of 1984, the Family Court would have exclusive jurisdiction to direct return of *stridhan*.

15. A Division Bench of this Court in the matter of **Neel Kanth Jaiswal v. Smt. Manju Lata Jaiswal**¹⁰ has held that the scope of Section 27 of the Act of 1955 is limited and only order relating to property presented at or about the time of marriage may be made by the Court dealing with the issue triable under the Hindu Marriage Act, 1955 belonging jointly to both the husband and the wife and for return of *stridhan*, suit or proceeding would be maintainable under Explanation (c) to sub-section (1) of Section 7 of the Act of 1984. It was observed as under:

“15. The scope of Section 27 of the Hindu Marriage Act, 1955 is limited and only order relating to property presented at or about the time of marriage may be made by the Court dealing with the issue tribal under the Hindu Marriage Act, 1955 belonging jointly to both the husband and the wife. The claim of the respondent in the present suit shows that she has filed the suit for recovery of Strithan belonging to her and owned by her. Provisions of Section 27 of the Hindu Marriage Act, 1955 does not provide the remedy for recovery of property other than the property presented at or about time of marriage belong to husband and wife therefore, even otherwise independent suit or claim for recovery of Stridhan was not competent in the divorce proceedings. By filing present suit respondent has claimed the return of Stridhan which is maintainable in accordance with Clause (c) of explanation 2 of clause (1) of Section 7 of the Family Court's Act, 1984 ...”



16. At this stage, it would be apposite to notice Section 27 of the Act of 1955 which states 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.”

17. A focused perusal of Section 27 of the Act of 1955 would show that this provision is intended to prevent multiplicity of litigation in respect of certain property between parties to any proceeding under the Act by laying down in effect, that an application with respect to any property presented at or about the time of marriage to both the husband and the wife may be made by either party to such proceeding and that the court may in the exercise of its discretion make provision for disposal of such property as it deems just and proper. The language of Section 27 of the Act of 1955 is explicitly clear and unambiguous. The entire section is qualified by words *‘in any proceeding under this Act’* and further *‘may make such provision in the decree’*. These two qualified phrases used by the legislature under Section 27 of the Act of 1955 makes the provision “ancillary”. In other words, there must be primary proceeding under the Act of 1955 in which the relief as available under Section 27 can be sought, meaning thereby that relief under Section 27 of the Act of 1955 is secondary in nature based on the primary proceeding as initiated under the provisions of the Act of 1955 if the said relief is sought





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under the main/primary proceeding. It could be understood in other words as that the relief as available under Section 27 of the Act of 1955 can be sought “in addition to” and “along with” the substantive and main relief as is sought in the main proceeding initiated under the provisions of the Act of 1955.

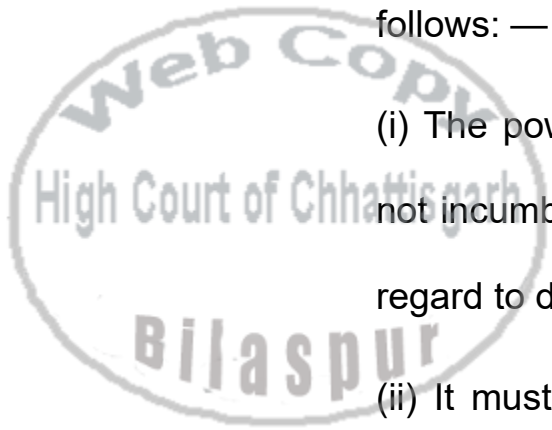
18. Section 27 of the Act of 1955 does not envisage deciding any question as to the title of the property involved therein. Keeping in view the above legislative intent and the plain language used in Section 27, the principles that emerge therefrom are as follows: —

(i) The power of the matrimonial Court is discretionary and it is not incumbent on the Court to make provision in the decree with regard to disposal of the property.

(ii) It must be a matrimonial proceeding pending under the Act and an application for disposal of the property under Section 27 of the Act must be made before the decision of the said matrimonial proceeding.

(iii) The provision to be made must be just and proper as the Court deems having regard to the adjustment of equities between the parties and surrounding circumstances.

(iv) The property contemplated must be such as was presented at a time or stage which is in close proximity of the marriage, whether presented before or after the marriage.





(v) The property so presented may either be to the wife, husband or both and at the time the Court is required to exercise discretion the property may belong jointly to both the husband and the wife. (See Nandini Sanjiv Ahuja v. Sanjiv Birsan Ahuja¹¹.)

19. The Supreme Court in Balkrishna Ramchandra Kadam (supra) held that Section 27 of the Act of 1955 provides an alternate remedy to the wife so that she can recover the property which is covered by the above-stated provision, by including it in the decree in the matrimonial proceedings, without having to take recourse to the filing of a separate Civil Suit and avoid further litigation. It has been observed in paragraph 10 of the report as under: -

"10. On a plain reading of the section, it becomes obvious that the Matrimonial Court trying any proceedings under the Hindu Marriage Act, 1955, has the jurisdiction to make such provision 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. This section provides an alternate remedy to the wife so that she can recover the property which is covered by the section, by including it in the decree in the matrimonial proceedings, without having to take recourse to the filing of a separate Civil Suit and avoid further litigation. In the instant case, we find that the wife had laid claim to certain items of jewellery and in her deposition, she had mentioned the items of jewellery which she had received "at or about the time of her marriage" and, in particular, had mentioned the

11 AIR 1988 Bombay 239



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items of jewellery which were given to her by her father at the time of the marriage.”

Their Lordships further held that the property, as contemplated by Section 27 of the Act of 1955 is not the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression “at or about the time of marriage” has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their “joint property”, and observed as under in paragraph 13 of the report: -

“13. ... The finding of the trial court clearly overlooked the provisions of Section 27 of the Hindu Marriage Act which unmistakably vests the jurisdiction in the court to pass an order, at the time of passing a decree in a matrimonial cause, in respect of the property presented, at or about the time of marriage, which may belong jointly to the husband and the wife. The learned single Judge also fell in complete error while concurring with the view of the trial court to say that there was no evidence on the record to show that the property claimed by the wife was presented to her at the time of her marriage. The learned single Judge failed to take notice of the deposition of the respondent in that behalf. Moreover, the property, as contemplated by Section 27 is not the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression "at or about the time of marriage" has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "joint property", implying thereby that the property can

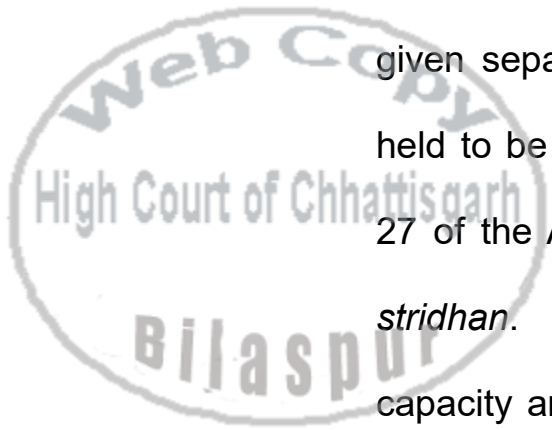




be traced to have connection with the marriage. All such property is covered by Section 27 of the Act.”

20. In light of the above legal analysis, it is quite vivid that Section 27 of the Act of 1955 is an additional remedy available to the parties to a marriage to file an application for granting the relief with respect to any property presented at or about the time of marriage which may jointly belong to both husband and wife. As such, Section 27 of the Act of 1955 is applicable only in respect of property received at or about the time of marriage which may belong jointly to both husband and wife. Any property which is given separately to husband or the wife as *stridhan* cannot be held to be jointly belonging to both of them and in turn, Section 27 of the Act of 1955 would not be applicable for restitution of *stridhan*. *Stridhan* is the property of the wife in her individual capacity and the husband is merely the trustee of that property. If the husband be the trustee of the property, he is liable to return that property or value thereof under the substantive law or in equity.

21. Thus, it is quite well settled that application of Section 27 of the Act of 1955 is limited to the property of husband and wife jointly belonging to them and *stridhan* is the separate property of the wife, the husband is trustee of that property and he is liable to return that property or value thereof under the substantive law and not covered by Section 27. However, there is no express provision in the Act of 1955 for making an application for return of



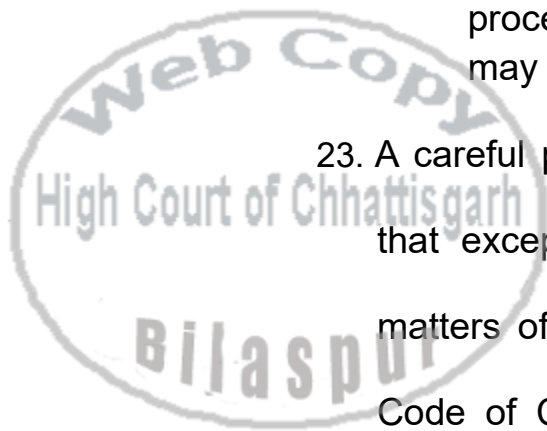


that property though the Family Court by virtue of Explanation (c) to sub-section (1) of Section 7 of the Act of 1984, would have exclusive jurisdiction and competence to direct return of *stridhan* to a wife.

22. Since there is no express provision in the Act of 1955 for making application for return of *stridhan* to a Family Court, it would be appropriate to refer to Section 21 of the Act of 1955.

“21. Application of Act 5 of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.”

23. A careful perusal of Section 21 of the Act of 1955 would show that except as is otherwise provided in the Act of 1955, all matters of procedure under the Act are to be regulated by the Code of Civil Procedure. This provision confers on the High Court, power to frame rules regulating the procedure to be adopted for the purpose of carrying into effect the various provisions of this Act. However, in matters relating to which there is no provision in the Act of 1955 and which are not regulated by the rules made by the High Court, the procedure to be followed under the Act in all proceedings must be regulated, as far as may be, by the Code of Civil Procedure, 1908. At this stage, it would be appropriate to notice Section 4(1) of the CPC, which states as under: -





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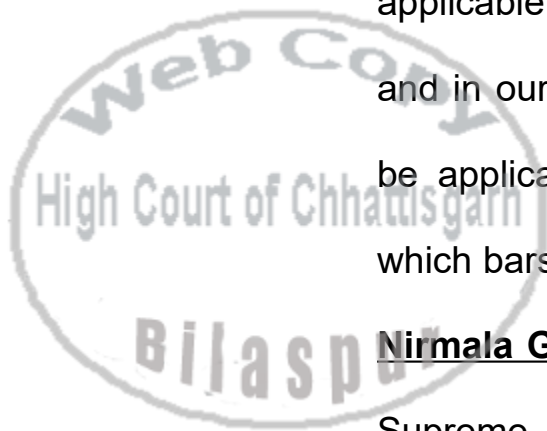
“4. Savings.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.”

24. A focused glance of Section 4(1) of the CPC would make it clear that the procedure prescribed by the special law will not be limited by the CPC. However, the Act of 1955 itself adopts the CPC as far as it is applicable in the matrimonial proceedings under the Act and, therefore, all the provisions of the CPC will be applicable to the matrimonial proceedings under the Act of 1955 and in our considered opinion, Section 151 of the CPC will also be applicable as there is no provision under the Act of 1955 which bars the application of Section 151 of the CPC. (See **Smt. Nirmala Gupta v. Ravendra Kumar alias Munna Gupta**²⁴). The Supreme Court in the matter of **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**²⁵ held that Section 151 of the CPC itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice.

25. In light of the above-stated legal position, we are of the considered opinion that by virtue of Section 21 of the Act of 1955 read with Section 4(1) of the CPC, substantive & independent application under Section 151 of the CPC would be maintainable before the Family Court claiming return of *stridhan* by wife. As

²⁴ AIR 1996 MP 227

²⁵ AIR 1962 SC 527





such, substantive independent application under Section 151 of the CPC would be maintainable before the Family Court for return of *stridhan* and this will be the additional remedy to a wife who could not claim her *stridhan* under the provisions of Section 27 of the Act of 1955 in a matrimonial proceeding.

26. In view of the aforesaid analysis, we are of the considered opinion that by virtue of Explanation (c) to sub-section (1) of Section 7 of the Act of 1984, proceeding under Section 151 of the CPC for return of *stridhan* would be maintainable before the Family Court, whereas in the matrimonial proceeding before the Family Court if any application for disposal of property is made, with regard to the property which is belonging jointly to husband and wife presented to wife or husband or to both “at or about the time of marriage” which may belong jointly to both husband and wife, petition under Section 27 of the Act of 1955 would be maintainable.

27. Consequently, the reference is answered as under: -

“It is held that substantive and independent application under Section 151 of the CPC for return of *stridhan* would be maintainable before the Family Court under Explanation (c) to sub-section (1) of Section 7 of the Act of 1984.”

28. In light of the above-stated findings and answer, the judgment rendered by this Court in **Smt. Babita alias Gyatri** (supra) followed in **Smt. Anjali Trivedi** (supra) cannot be held to be

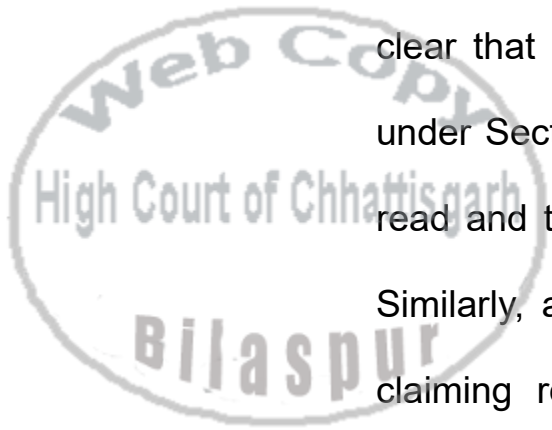




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laying down the good law, accordingly they are overruled, however, the judgment rendered in **Smt. Devika Joshi** (supra) to the extent that wife is entitled to recover *stridhan* by filing appropriate proceeding before the Family Court is the correct law, but, further, the finding that it would be maintainable under Section 27 of the Act of 1955 cannot be said to be laying down the correct law in view of the reference answered herein. The question of law is answered accordingly.

29. While parting with the record, by way of clarification, it is made clear that any application already filed and decided or pending under Section 27 of the Act of 1955 claiming *stridhan* has to be read and treated as application under Section 151 of the CPC. Similarly, application filed under Section 27 of the Act of 1955 claiming return of *stridhan*, decreed / dismissed, has to be treated as filed under Section 151 of the CPC for all practical purposes otherwise it will result in failure of justice. Wrong and incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction to grant relief, as the Family Court would have jurisdiction by virtue of Explanation (c) to sub-section (1) of Section 7 of the Act of 1984 to order for return of *stridhan*.





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30. Let the matter be placed before the appropriate Division Bench for deciding the appeal in accordance with law in light of the question of law answered herein-above.

Sd/-
(Deepak Kumar Tiwari)
Judge

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Soma





Head Note

Substantive and independent application under Section 151 of the CPC for return of *stridhan* would be maintainable before the Family Court under Explanation (c) to sub-section (1) of Section 7 of the Family Courts Act, 1984.

व्यवहार प्रक्रिया संहिता की धारा 151 अंतर्गत स्त्रीधन की वापसी के लिये प्रस्तुत मूल तथा स्वतंत्र आवेदन कुटुम्ब न्यायालय अधिनियम की धारा 7 की उपधारा (1) के स्पष्टीकरण (ग) अंतर्गत कुटुम्ब न्यायालय के समक्ष पोषणीय होगा।

