Andhra High Court
Mumtaz Begum vs Ahmed Khan And Ors. on 6 March, 1996
Equivalent citations: 1996 (3) ALT 586
Author: S Maruthi
Bench: S Maruthi
JUDGMENT S.V. Maruthi, J.

1. The plaintiff is the appellant. The appeal arises out of a suit O.S.No. 19 of l982 filed by the plaintiff for a decree against the person and properties of the defendants and to direct the defendants 1 to 3 to pay the value of the suit schedule Zahez articles Chadava or return the same articles as detailed in the suit schedule including the return of the Scooter 150 Bajaj bearing No. ATX 8325 or its value prevailing in the market i.e. Rs. 15,000/- and to direct the defendants 1 to 3 to pay the Mehar amount of Rs. 5,500/- and two Dinar-E-Surque or its equivalent value of two tulas pure gold at Rs.1,950/- per tula and for awarding costs with interest at 12% per annum.

2. The averments made in the plaint in brief are as follows: The plaintiff and the 1st defendant were married on 19-11-1978 as per Muslim personal law at Kothagudem. Defendants 2 and 3 are the father and mother of defendant No. 1. The mehar of the plaintiff was fixed at Rs. 5,500/- with two Dinar Surque (1 dinar is equivalent to 1 tula of pure gold). On the occasion of the marriage, the plaintiff's parents gave suit schedule Zahez articles including a scooter bearing Model No. 1150/ATX 8325, gold and silver ornaments, grocery, cutlery, furniture, bedding, wearing cloths etc. On the occasion of marriage, the 1st defendant has given 7 tulas of necklace as "Chadava" i.e. gift, which has become the property of the plaintiff being a gift given on the occasion of the marriage. Since the plaintiff was meted with ill-treatment by the parents of the 1st defendant, they are living separately. The plaintiff requested the 1st defendant to return all the suit schedule zahez articles and chadava articles besides mehar amount. Since the 1st defendant did not return them, she issued a lawyer's notice on 12-3-1982. The 1st defendant issued a reply stating that he had given talaq to the plaintiff which had become effective from the date of receipt on 27-3-1982. Hence this suit for recovery of suit schedule Zahez and Chadava articles, Mehar amount and 4 tulas of gold ornaments snatched from the plaintiff's person on 21-2-1982 during her last visit to the house of defendants 1 to 3 and the scooter.

3. The 1st defendant filed a written statement stating that the Jahez list submitted by the plaintiff does not speak the name of the donor and donee. The plaintiff cannot ask for the return of the gifts alleged to have been given to the 1st defendant. The Jahez articles given by the plaintiff's parents to the 1st defendant or his guardian are irrevocable gifts. He admitted that the 3rd defendant gave gold chain but not as chadava gift to the plaintiff. It does not become the property of the plaintiff. He denied that he kept the jahez articles and the gold chain alleged 'chadava' with him. The plaintiff is not entitled to recover the jahez articles and the gold chain which was given to her as chadava and the scooter.

4. Defendants 2 and 3 also filed a written statement contending that the plaintiff's parents did not give the alleged jahez articles and that the plaintiff is not entitled to recover the suit schedule property.

5. The plaintiff examined 4 witnesses on her behalf and the defendants examined 5 witnesses. The plaintiff marked Exs. A-1 to A-14 and the defendants have not filed any documents. On the basis of the above pleadings, the learned Subordinate Judge framed the following issues:

1. Whether the plaintiff's parents have given the suit schedule 'Jahez' articles?

2. Whether the defendant-1 gave gold ornaments i.e. 'chadava' weighing 7 tulas of gold to the plaintiff and it has become an absolute property of the plaintiff.

3. Whether the Jahez and Chadava articles are retained by the defendants?

4. Whether the defendants forcibly took bangles and gold chain from the plaintiff by use of violence?

5. Whether the value of the suit schedule is properly valued?

6. Whether the Mehar and Iddat amounts were paid by the defendant No. 1?

6. The learned Judge, on the basis of the evidence, decreed the suit to an extent of Rs. 21,024/- against the 1st defendant. The rest of the suit claim was dismissed. The suit was dismissed without costs against defendants 2 and 3. The 1st defendant was also directed to pay to the plaintiff the proportionate costs of the suit. In other words, the learned Judge rejected the claim of the plaintiff for recovering the Chadava i.e. 7 tulas of gold and the Scooter which was given by her parents at the time of marriage. Hence, the appeal by the plaintiff.

7. The main contention of the appellant is that the 7 tulas of gold was presented to her at the time of marriage. Any gift presented at the time of marriage became the absolute property of the appellant and, therefore, she is entitled to recover the same. She also contended that the Scooter was given by her parents to the first respondent and, therefore, she is entitled to recover the same. It is submitted that Under Section 3(1) (d) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short 'the Act'), a divorced woman shall be entitled to retain all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends. Therefore, in view of Section 3(1) (d) of the Act, the appellant is entitled to recover the gold ornaments which were given to her by the first defendant at the time of the marriage. On the other hand, the learned counsel for the respondents contended that the Act was passed in 1986 and the suit was filed in 1982 and since the Act has no retrospective effect, the learned Judge was right in not granting the relief in respect of the Chadava.

8. The question therefore, is whether the appellant is entitled to recover the Chadava article and the Scooter?

9. It is not disputed that the gold chain was given at the time of marriage by the first respondent and it was taken away by the husband. Admittedly, the property that was given at the time of marriage becomes the 'Stridhana' of the wife and, therefore, the appellant is the absolute owner of the property. It is a gift given to her by the first respondent at the time of the marriage and she has

accepted the same, and therefore, it cannot be revoked later on. Hence, she is entitled to retain the same.

10. As regards the Scooter, admittedly, it was a gift given to the first respondent at the time of the marriage by the parents of the appellant. Since, it is a gift given by the parents of the appellant, once it is accepted, it becomes the absolute property of the donee and, therefore, he is entitled to retain the same.

11. There cannot be any dispute that the Muslim Women (Protection of Rights on Divorce) Act, 1986 was brought into force on 19-5-1986 and there is no provision making it retrospective in operation. Therefore, the appellant cannot seek relief Under Section 3(1) (d) of the Act.

12. However, before the Act came into force the Muslim Law in force is applicable to both the parties. Tayyibiji's Muslim Law Sub-para-1 (4th Edition, P: 425) says that under Hanafi Law, a gift cannot be lawfully revoked where at the time when the gift is made the donor is the husband or wife, of the donee. Sub-para (2) says that the Shiite authorities are agreed that to revoke such a gift is abominable, and some holt! it unlawful; but the better opinion is that it is unlawful. Therefore, the Muslim Law recognises that a gift given by the husband or wife cannot be revoked. At the time when the 'Chadava' was given to the appellant the first respondent was her husband. Therefore, such gift is irrevocable and the first respondent cannot retain the same. She is entitled to recover the same and her appeal to that extent is allowed.

13. As regards the Scooter, it is no doubt given by the parents of the appellant at the time of her marriage to the first respondent. When it was gifted to him no condition was imposed stating that on the happening of any event it is revocable. Further, they have not reserved the right to revoke the gift. Since it was accepted by him i.e. the first respondent, the appellant is not entitled to recover the same as the gift is not revocable on the facts and circumstances of the case.

14. In view of the above, the appeal is allowed to the extent indicated above namely that the appellant is entitled to recover the gold chain which was given to her at the time of the marriage by the first respondent as Chadava. The appeal is partly allowed with proportionate costs.