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**Vaijayantabai W/O Keru Gangarde and anr. Vs. Keru Anant Gangarde, Since Deceased by His Heirs and ors.**

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**Court : Mumbai**

**Decided On : Feb-19-1991**

**Reported in : 1991(2)BomCR336; (1991)93BOMLR1004; II(1991)DMC548**

**Judge : V.V. Kamat, J.**

**Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18 and 18(2); [Hindu Marriage Act, 1955](#) - Sections 18, 25 and 25(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151**

**Appeal No. : First Appeal No. 147 of 1978 (Bombay) and First Appeal No. 722 of 1989 (Aurangabad)**

**Appellant : Vaijayantabai W/O Keru Gangarde and anr.**

**Respondent : Keru Anant Gangarde, Since Deceased by His Heirs and ors.**

**Advocate for Def. : V.J. Dixit, Adv. for respondent No. 10**

**Advocate for Pet/Ap. : R.G. Karmarkar, Adv.**

**Disposition : Appeal allowed**

**Judgement :**

## **V.V. Kamat, J.**

1. The disastrous consequences of the age old anxiety for the birth of a male child that are suffered by the appellant No. 1 in this appeal are writ large on the face of the present proceedings.

2. The question that is posed by this appeal is whether the appellant No. 1 can base her claim for maintenance under section 18(2)(d) of the [Hindu Adoptions and Maintenance Act, 1956](#), inspite of the fact that her marriage is not legal in accordance with the provisions of the [Hindu Marriage Act, 1955](#). This claim has been denied by the trial court, leaving her to approach this court by this appeal.

3. On January 8, 1975, the appellant No.1 - Vaijayantabai for herself and on behalf of the appellant No. 2, her daughter Taibai, filed in forma pauperis Special Civil Suit No. 130 of 1975 in the court of the Second Joint Civil Judge, Senior Division, Ahmednagar for maintenance, arrears thereof, the marriage expenses and the cost of the suit.

4. Practically all the facts which form the basis of the claim are admitted or proved, and it is so held by the learned trial Judge. They are briefly stated as follows :

The original defendant-Keru Gangarde, an agriculturist of village Mandali, having large properties consisting of agricultural lands and houses, initially married to Ambai who gave birth to eight daughters, Out of whom, seven daughters are alive. He wanted a son and, therefore, married the appellant No. 1- Vaijayanta, 23 years before the suit, according to Hindu rituals at village Sakat Tq. Ashti.

5. Thereafter for a period of 15 years, Keru and Vaijayanta led a happy married life. Vaijayanta gave birth two daughters - Babai, aged about 20 years and Tai, aged about 11 years, on the date of suit.

6. Finding that not only Ambai gave birth to eight daughters but also Vaijayanta gave birth but consecutively to two daughters, it is alleged, Keru started ill treating Vaijayanta, obviously for her not giving birth to a son. Vaijayanta was neglected and then Vaijayanta and her two daughters were driven out of the matrimonial home.

7. Vaijayanta went to reside with her parents at village Sakat. The parents made efforts through the villagers for maintenance from Keru who refused his liability to maintain Vaijayanta and her minor daughter Tai.

8. A notice dated April 28, 1971, was sent through the advocate calling upon Keru to make arrangements for maintenance of Vaijayanta and her daughters. The notice also claimed for arrangements for the marriage expenses of Babai. Keru did not pay any heed nor made any arrangement for the marriage expenses. Vaijayanta's father Bapurao, by spending an amount of Rs. 16,000/-, got Babai married.

9. Vaijayanta has alleged that Keru owns about 46 Acres of land which include Bagayat land fetching him an yearly income of Rs. 20,000/-. She alleged that Keru is in possession of silver and gold ornaments and does money-lending business. The suit was, therefore, filed for a claim of maintenance at Rs. 100/- per month for Vaijayanta and for Rs. 50/- per month for Tai from the date of the suit; for an amount of Rs. 23,250/- towards marriage expenses of Babai and arrears of maintenance for a period of 3 years prior to the suit.

10. The suit was resisted by the written statement (Exhibit 29) wherein Keru Gangarde had admitted marriage with Vaijayanta 23 years prior to the suit. Keru also admitted paternity of the two daughters - Babai and Tai. Obviously, Keru has denied his driving away Vaijayanta alongwith her daughters and other averments in the plaint in regard thereto.

11. Broadly on these pleadings, the learned Judge by Exhibit 21 framed the following issues:-

'(1) Whether the plaintiffs prove that plaintiff No.1 is legally entitled to claim maintenance from the defendant?

(2) Whether the plaintiffs prove that plaintiff No. 2. is legally entitled to claim maintenance?

(3) Whether the plaintiffs prove that the defendant deserted and refused to maintain them?

(4) Whether the defendant is liable to pay maintenance. If yes, then what quantum?

(5) Whether the defendant is liable to pay expenses for the marriage of Babai. If yes, then what quantum?

(6) Whether the suit is barred by limitation?

(7) Whether this Court has jurisdiction to try the suit?

(8) What order and decree?'

12. The only issue to be considered is the legal liability of the defendant -Keru for maintaining the present plaintiffs.

13. The learned Judge, by the impugned judgment, has recognised and granted maintenance of Rs. 50/- to plaintiff No. 2, as well as the amount of arrears of maintenance for a period of 3 years prior thereto by creating the necessary charge of maintenance on the property of Keru bearing Survey No. 37 of village Mandali Tq. Karjat Dist. Ahmednagar by directing the Revenue Officer to make the necessary mutation entry in the Record of Rights of the suit property.

14. The learned Judge held, as far as the appellant No. 1 - Vaijayanta is concerned, that the claim to maintenance under section 18 of the [Hindu Adoptions and Maintenance Act, 1956](#), can be recognised only in respect of a legally wedded wife and is not extended to any other woman under any circumstances. The learned Judge came to this conclusion in view of the fact that the marriage of Keru with Ambai was subsisting rendering the marriage of Keru with appellant No. 1 as illegal and void in accordance with the provisions of the Hindu Marriage Act.

15. The learned Judge came to this conclusion on the basis of the admitted position not only on the basis of the averments in the written statement, but also on the basis of the evidence of Keru married the appellant No. 1 before 22 years, and regarded Ambai as his first wife and the appellant No. 1 - Vaijayanta as his second wife.

16. On behalf of the appellant No. 1 - Vaijayanta, she examined herself (Exhibit 37) to contend that at the time of her marriage with Keru, the persons concerned were represented that Keru had already divorced Ambai. Vaijayanta's father Bapurao is also examined at Exhibit 40 who also repeated that Keru told him that he had divorced Ambai. On behalf of the plaintiffs, one Raoji Mhaske - Exhibit 41 - is also examined as a witness for the marriage of Keru and Vaijayanta, as a distant relative of Vaijayanta. Additionally, Vaijayanta's brother Kisan Bapurao is also examined.

17. Keru examined himself at Exhibit 43, and as stated above, he has admitted marriage with Vaijayanta. Keru had stated that he had about 80 Acres of land at the time of his marriage with Vaijayanta and he sold about 30 Acres thereafter out of the said land. He had stated that he gets about Rs. 1500/- as income from the land in question. However, he has admitted that he has not sold any land during the period of plaintiff No. 1's stay as a married wife with him.

18. Thus, the evidence on record shows that Keru treated Vaijayanta as his wife, almost legally married. Keru and Vaijayanta resided together in the matrimonial home well-nigh for a period of 15 years thereafter. The friends, relatives and villagers recognised Keru and Vaijayanta as husband and wife. The consistent evidence on behalf of the plaintiffs shows that Keru made a representation at the time of settlement of the marriage that he had divorced Ambai and the marriage with Vaijayanta was settled in pursuance of this representation by Keru.

19. The necessary basic facts for the purpose of deciding the question as to whether Vaijayanta is entitled to a claim for maintenance as per her suit are, therefore, crystal clear that Keru treated Vaijayanta as his wife and cohabited with her for a period of 15 years after the marriage giving birth to two daughters.

20. During the pendency of the appeal Keru Gangarde expired and his heirs and legal representatives have been duly brought on record. The appeal came to be transferred to this Bench and transfer notices have been duly served on the appellants. Even after the service of the transfer notices, none appeared for them and, therefore, firstly in view of the fact that this is an old matter and also in view of the fact that this appeal raises an important question for decision, by order dated

February 1991, I requested Shri R. G. Karmarkar, a senior Advocate of this Court, to appear as amicus curiae, under the legal aid system, obviously in view of the fact that the appellants are poor and mostly must be unable to engage an Advocate after the decision of their suit in the year 1976. Shri R. G. Karmarkar readily accepted my request and in pursuance thereof has really made strenuous efforts to place all the necessary law enunciated in the reported decisions on the subject. I must record that Shri R.G. Karmarkar has taken utmost pains to assist this Court in the decision of this appeal and I would be failing in my duty in not adequately and properly acknowledging his efforts in conducting this appeal. Shri Vinay Dixit, Advocate, has appeared for respondent No. 10 and in view of the fact that respondents Nos. 1, 2, 3 (A & B) and 4 to 11 are served through transfer notices and also in view of the fact that the respondent No. 10, who is represented by Shri Dixit, is the brother of respondents Nos. 2 and 6 who are not served, the estate having been represented for the purpose of this appeal, the appeal was taken up for hearing.

21. Shri Karmarkar, the learned Counsel for the appellants, submitted that the appellant No. 1 - Vaijayanta can claim maintenance inspite of the fact that her marriage with Keru is not legal in accordance with the provisions of the Hindu Marriage Act. The learned Counsel relied upon the decisions; one of this Court, Rajeshbai v. Shantabai 1981 Bom. 699: 2 M. C. 31 and the other of Madras High Court, T.P.K. Nateshan v. Achiyayee, : AIR1975 Mad202 . Relying on these decisions, the learned Counsel submitted that a Hindu woman, whose marriage is void under the provisions of the Hindu Marriage Act, because of the existence of a valid marriage of the first wife, is entitled to claim maintenance out of the estate of the deceased with whom she lived as a wife if she is not in a position to maintain herself remains chaste and does not marry other person. The learned Counsel submitted that in the Nateshan's case, the Madras High Court has come to the conclusion that the wife is entitled to claim maintenance under section 18(2)(d) of the [Hindu Adoptions and Maintenance Act, 1956](#), on the ground that the husband has other wife living. On going through the decisions of the Madras High Court, it has to be stated that in the said case, the claim was on behalf of the first wife on the ground that the second marriage of the husband therein was illegal and in that connection, the Court has come to the conclusion on the basis of acceptance of

the second marriage by the defendant- husband therein that the wife is entitled to maintenance. In the said case, the Court came to the conclusion that the first wife is entitled to claim maintenance. The facts in the present case are slightly different.

22. In Rajeshbai's case (supra), this Court has stated that the term 'wife' denotes a legal and juridical relation resulting from a valid and legal marriage. It is observed that the measures for maintenance by themselves are secular and social in character. These measures aim at avoiding immorality and destitution. Maintenance for judicial purposes has its own pragmatics having relation to the need and necessity to make provisions for securing reasonable bio-economic as well as bicultural requirements for persons such as shelter, food, garment and health. The need to provide reliefs of maintenance emanate from social ethics and personal economics and this need is sought for both on the moral and secular grounds. Maintenance is a personal obligation and where there is estate, the rights in maintenance could be worked against the estate and there can be a charge upon it.

23. The principles of Hindu Personal Law have developed in an evolutionary way out of the concern for all those subject to it so as to make fair provision against destitution. The law of maintenance stems out of the secular desire to achieve the social objectives for making bare minimum provision to sustain the members of relative smaller social groups. The institution of property amongst the Hindus is a fine admixture of rights and duties, obligations and liabilities, the object being the right or entitlement to it. It is observed that there is no reason to hold that by codification of the laws, this basic concept for providing a sort of social security in favour of the defendants has been completely taken away or abrogated by the [Hindu Adoptions and Maintenance Act, 1956](#).

24. Accordingly, this Court in Rajeshbai's case, has sought support from two earlier decisions of this Court Govindrao v. Anandibai 79 Bom.L.R. 73 : 2 M. C. 372 & Sushilabai v. Ramcharan 1976 M.L.J. 82 : 2 M.C. 262. In Sushilbai's case, this Court was dealing with the question of grant of interim maintenance and in that connection has relied upon the provisions of section 151 of the Civil Procedure Code with reference to a suit for partition and in that dealing with the

powers of the Court to grant interim maintenance during the pendency of the suit in the event of the plaintiff having no independent source of livelihood. The Court has observed that the liability of maintenance arises from the existence of the relationship and on possession of the property. In Govindrao's case, the Court was dealing with the discretion under section 25(1) of the [Hindu Marriage Act, 1955](#), of the Court exercising jurisdiction at the time of passing any decree and in that connection, in a decree for nullity of marriage has ordered the grant of alimony to the wife and it is in this connection this Court has observed that there is no inconsistency between the provisions of section 25(1) of the Hindu Marriage Act and those of section 18 of the [Hindu Adoptions and Maintenance Act, 1956](#).

25. Relying on these two decisions, in Rajeshbai's case, this Court has observed that even after rendering a decree of nullity, the wife related by such marriage was treated to be entitled to have alimony and maintenance under section 25 of the Hindu Marriage Act. The Court has stepped one step ahead to observe that the Court possesses the inherent power to make such orders in matters of maintenance as may be necessary so as to meet the ends of justice, and such power has to be exercised undoubtedly and unfailingly to reach out a just and fair dispensation of justice to the parties before the Court. The facts of Rajeshbai's case are similar to the case at hand, in that even in Rajeshbai's case, the marriage was void because of the existence of earlier wife.

26. Shri Karmarkar, has yet again placed reliance on one more decision of the Andhra Pradesh High Court C. Obula Konda Reddy v. C.P.V. Lakshamma, : AIR 1976 AP43 , laying down a proposition that the Hindu wife contemplated by section 18 means a Hindu wife whose marriage is solemnised though void under the Hindu Marriage Act and, therefore, such a wife will be entitled to claim maintenance from the husband. In this Obula Reddi's case, the claim for maintenance of the wife rejected on the ground that her marriage was void on the ground of the existence of the first wife. The Andhra Pradesh High Court has observed that the Act does not define a Hindu wife and in that connection, the Court has observed that the interpretation that the marriage has to be valid in accordance with the provisions of Hindu Marriage Act, would render the provisions of section 18 almost otiose. The Court has further observed that an unscrupulous

married man may beguile an unwary woman into matrimony and thereafter turn out and say 'our marriage is void and I need not maintain you'. The Court has observed that it could not have been the intention of the Legislature that such a woman is not entitled for any maintenance.

27. For the purposes of the record, I must state that this decision in Rajeshbai's case though a different context has been referred to and accepted in subsequent decision of the Division Bench of this Court, Shantaram v. Smt. Dagubai, : AIR1987 Bom182 . In Shantaram's case, this Court was dealing with the right of maintenance of a woman under section 25 of the Hindu Marriage Act whose marriage is void or declared void under the Act. In this connection, the Division Bench has observed that it is in agreement with the decision in Rajeshbai's case that the right recognised by section 18 of the Hindu Marriage Act can be worked out in any civil proceedings. The Division Bench has observed that section 151 of the Civil Procedure Code does not invest the Court with powers, but only enable a Court to pass orders to do justice between the parties. The Court observed that the inherent powers are in addition to and complementary to the powers expressly conferred upon it by other provisions of the Civil Procedure Code. The Court has observed that no right is created under the inherent powers. It must be stated that in Rajeshbai's case, this Court has not observed that section 151 of the Code creates any right, but has sought the help of the provisions of section 151 of the Code to do substantial and effective justice to the facts of the case before it. The position that emerges as a result of the above discussion is that the appellant No. 1 is entitled to a claim for maintenance. Shri Vinay Dixit, the learned Counsel, contended in support of the decree, by placing reliance on section 125 of the Criminal Procedure Code. I am afraid, it is not possible to consider the provisions of section 125 of the Criminal Procedure Code in the aid of interpretation of the provisions of section 18 of the [Hindu Adoptions and Maintenance Act, 1956](#). The distinction between the right of interim maintenance and permanent alimony under the Hindu Marriage Act on one hand and the right recognised in favour of a wife under the [Hindu Adoptions and Maintenance Act, 1956](#), on the other hand, has to be kept in mind and from the facets of the problem discussed by me in detail hereabove, it will have to be held that the claim for maintenance has to be recognised on the basis of the concept of the Hindu family under the Hindu

Personal Law. The observations of this court in Rajeshbhai's case are apt and fitting with reference to the facts at hand in the present appeal . For all these reasons, I hold and come to the conclusion that the appellant No.1 is entitled to the claim of maintenance and arrears.

28. With regard to the claim of Rs.16,000/- by way of marriage expenses, the learned judge in answer and discussion of issue No. 5 has rightly held that Babai was a married daughter and that unmarried daughter, if adult, cannot claim maintenance under section 20(3) of the Hindu Adoptions and Maintenance Act. I see no reason to hold otherwise with regard to this item.

29. The appellant No. 1 has claimed the amount of maintenance at the rate of Rs. 100/- per month and also for arrears for a period of 3 years prior to the suit. The learned judge of the trial Court has already granted arrears of maintenance to the minor daughter Tai for a period of 3 years prior to the suit. The appellant No. 1, therefore, is also entitled to a claim for arrears of maintenance for a period of 3 years prior to the suit amounting to Rs. 3,600/- (three thousand six hundred only).

30. As far as the appellant No. 2 who was minor on the date of the suit and also on the date of filing of this appeal, will obviously get the amount of maintenance till the date of attainment of her majority in view of the provisions of section 20(3) of the Hindu Adoptions and Maintenance Act.

31. Before parting with the judgement, I must record and also acknowledge with gratitude the invaluable assistance rendered to me by Shri R.G. Karmarkar, Advocate appointed by me. He has placed all these submissions based on the decisions cited and discussed in detail by me hereinabove. I recommend that the concerned authorities under the legal aid system should consider the efforts taken by the learned Advocate in the matter. I also recommend that he should be, if possible, paid an amount of Rs. 750/- , taking into consideration the efforts taken by him and the manner in which he appeared and argued the appeal for a destitute Hindu woman.

32. The result of the discussion is that the appeal, as far as the appellant No. 1 Vaijayanta is concerned, is allowed with costs throughout and the judgement and

decree dated October 15, 1976, in Special Civil Suit No. 130 of 1975 of the Second Joint Civil Judge, Senior Division, Ahmednagar, is hereby quashed and set aside and it is directed that the appellant No. 1 - Vaijayanta Gangarde is entitled to a claim of maintenance and the defendants-respondents are accordingly directed to pay maintenance to her at the rate of Rs. 100/- per month from the date of application i.e. on and from January 8, 1975, with a further direction that they are directed to pay Rs. 3,600/- to the appellant No. 1 - Vaijayanta Gangarde by way of arrears of maintenance. The charge of maintenance granted to the appellant No. 1 be kept on the property of the defendant-Keru Gangarde-deceased, now at the hands of the present respondents and the concerned Revenue Officer is directed to create such a charge by making the necessary mutation in the Record of Rights of the suitable property of village Mandali Tq. Karjat Dist. Ahmednagar in accordance with the provisions of sections 26 and 27 of the [Hindu Adoptions and Maintenance Act, 1956](#).

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