Gurupadayya Vs. Ashalata

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Court : Karnataka

Decided On : Oct-19-1993

Reported in : I(1994)DMC62; ILR1994KAR259; 1993(4)KarLJ372

Judge : N.D.V. Bhat, J.

Acts : Hindu Adoptions and Maintenance Act, 1956 - Sections 3 and 20

Appeal No. : R.S.A. No. 550 of 1993

Appellant : Gurupadayya

Respondent : Ashalata

Advocate for Def. : I.G. Gachchinamath, Adv.

Advocate for Pet/Ap. : B.V. Jigjinni, Adv.

Disposition : Appeal dismissed

Judgement :

N.D.V.Bhat, J.

1. In this Second Appeal the appellant has challenged the judgment and decree passed by the learned Principal Civil Judge, Bijapur in R.A.No. 75/1988 confirming the judgment and decree passed by the learned Munsiff, Bijapur in O.S.No. 135/1982.

2. The facts leading to the Appeal are as follows;

Plaintiffs-1 and 2 are said to be the daughters and plaintiff-3 is said to be the son of defendant - Gurupadayya and they were born to defendant through their mother Drakshayini. They filed a suit at O.S.No. 135/1982 against Gurupadayya .praying for monthly maintenance at the rate of Rs. 85/-. They alleged that their mother Drakshayini was married to Gurupadayya on 24.12,1955 according to Hindu rites and customs and after marriage they lived together for about three years and thereafter there were some quarrels between the two. According to them, though there was a Divorce Deed between the two, the same was not recognised according to the custom in the community to which they belong and the same was not acted upon and the same did not result in the dissolution of marriage between their mother Drakshayini and father Gurupadayya. It was also alleged that plaintiff No.1 was born on 28.10.1965, plaintiff-2 on 10.12.1967 and plaintiff-3 on 5.10.1973. They alleged that the earning of their mother who is in service is hardly sufficient to meet their needs. They also alleged that respondent refused to maintain them. They were putting up with their mother. On these allegations in substance, they prayed for a decree for maintenance.

3. The suit of the plaintiffs was resisted by the defendant, He contended, inter alia, that there was no relationship of wife and husband between him and Drakshayini and that the Divorce Deed brought an end to their marriage. He also took up a contention that plaintiffs were not born to him. It was also contended by him that the mother of the plaintiffs has been serving as a School Teacher and she is earning huge salary and her salary is more than sufficient for maintaining herself and her children. He also raised a contention that plaintiff's mother did not send any word to defendant to maintain them. He denied the other allegations made in the plaint which are not consistent with the stand taken by him. He prayed for the dismissal ofthe suit.

4. The learned Munsiff took the view that the divorce between the mother of the plaintiffs and defendant was not acted upon and that they were born to their mother by defendant after the alleged divorce. He also took the view that the suit is maintainable. The learned Munsiff also recorded a finding that plaintiffs-1 and 2

are entitled to get maintenance till the date of their marriage and plaintiff-3 is entitled to get maintenance from the defendant till he attains majority. He rejected the contention of the defendant that he is entitled to compensatory costs. In the result, he decreed the suit of the plaintiffs directing that defendant shall pay maintenance of Rs. 85/- p.m. to each of plaintiffs-1 and 2 from the date of the suit till the date of their marriage i.e., upto 30.4.1985 and 22.5.1985 and maintenance of Rs. 85/- p.m. to plaintiff-3 from the date of the suit till he attains majority.

5. Being aggrieved by the same, defendant preferred the aforesaid Regular Appeal before the learned Civil Judge, Bijapur. The learned Civil Judge concurred with the finding of the Court below that plaintiffs are born to their mother by the defendant. He also concurred with the findings of the lower Court that plaintiffs are entitled to maintenance at the rate of Rs. 85/- p.m. In the result, the appeal filed before him came to be dismissed. Hence, the instant Second Appeal.

6. At the stage of admission, it was noticed that both the sides are represented by Counsel and under the circumstances both of them were heard on all aspects relevant in Second Appeal with reference to the substantial question of law sought to be raised by Sri Jigjinni, learned Counsel for the appellant.

7. The only question which according to Sri Jigjinni, learned Counsel for the appellant that would arise for consideration as a substantial question of law is as to whether the plaintiffs are entitled to maintenance since under Section 20 of the Hindu Adoptions and Maintenance Act, the obligation is cast on the father or the mother to maintain and since the plaintiffs are put up with their mother who is having adequate income.

8. The learned Counsel for the appellant apart from relying on the Decision in SONAM TSERING v. KUNZANG SHERAB, AIR 1982 Sikkim 26, the Decision in BABY SAROJANI ALIAS OBI v. ACHUTHAN, 1965 Kerala L.T. 736, the Decision in TIKARAM PRATAPSINGH AND ORS. v. NARAYAN SINGH AND ORS., : AIR 1958 MP231 and the Decision in Smt. MUNNI DEVI v. Smt CHHOTI AND ORS., AIR 1983 Allahabad 444, contended that the evidence on record clearly shows that the mother of the plaintiffs is a School Teacher drawing a salary of Rs. 1500/- p.m. and was therefore able to maintain and in fact was maintaining the plaintiffs

and that therefore, they are not entitled to maintenance over and again from the father which according to him, would amount to double maintenance. The learned Counsel also submitted incidentally that the evidence on record would go to show that it is the version of the mother of the plaintiffs that she herself was giving financial assistance to the defendant and it is contended by him that the same would also go to show that the mother of the plaintiffs was affluent.

9. On the other hand, Sri Gachchinamath, learned Counsel for the respondents supported the judgments of the two Courts below and has relied on the Decision in KANIKI SUBRAYA GOWDA v. RUKMINI, 1964 Mys.L.J. Suppl. 375; the Decision in MALLAPPA GURULINGAPPA KAMERI v. KUMAR MALLAPPA KAMERI AND ORS., 1964(2) Mys LJ. 426 the Decision in MAHALINGA BHAT v. PARVATHI AMMA AND ORS., 1976(2) KLJ 155, and the Decision in AKKANAGAMMA AND ORS. v. R.NAGESWARAIAH AND ANR., 1968(1) Mys.L.J. 288,

10. The point of law canvassed by Sri Jigjinni, learned Counsel for the appellant is well settled as far as this Court is concerned. It is pointed out in KANIKI SUBRAYA GOWDA's case5 among other things, as under:

'As to the third point, what is contended by the learned Counsel for the appellant is that both the father and mother are jointly liable for the maintenance of their unmarried daughter. It is true that liability is cast on the father or mother. But that is not the same thing as to say that there is a joint liability of father and mother to maintain the child. From the language of the Sub-sections i.e., (1) and (3) of Section 20, it appears to me that the obligation is not joint but several. Father or mother, each is bound to the unmarried daughter by a distinct and independent legal relation, the only connection between them being in each case that the subject matter of the obligation is the same viz., the unmarried daughter, the plaintiff. Therefore, there is no warrant for holding that both the father and mother are jointly liable for the maintenance of their unmarried daughter,'

11. The High Court of Kerala in BABY SAROJANI's case2 has observed as under:

'Under Section 20 of the Hindu Adoptions & Maintenance Act, 78 of 1956 both parents (if they are Hindus) are bound to maintain their minor children and by

reason of Section 4 of that Act this provision must override Section 13 of the Cochin Thiyya Act 7 of 1107 under which the obligation is cast only on the father. I agree with the lower appellate Court in so far as it has held that this does not mean that a child can claim double maintenance; in other words, I think that if the child is being adequately maintained by one parent it cannot claim maintenance from the other as well, although I think that, if the maintenance provided by one parent is inadequate, the use of 'the' word 'or' in Sub-section (2) of Section 20 of Act 78 of 1956 which says that 'a legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor' would not preclude the child from claiming the deficiency from the other parent. But, in this case, although it would appear that the minor plaintiff is in the custody of the mother who brought the suit on her behalf as her next friend, there is nothing in the pleadings to show that the plaintiff was being adequately maintained or maintained at all by the mother. No such defence was taken; nor was issue joined on the question whether the plaintiff could make no claim against the defendant father because she was being maintained by the co-obligate mother. All that the written statement said was that the plaintiff and her mother had sufficient property to provide for the plaintiff's maintenance - that is an entirely different matter. That being so, I think the lower appellate Court was wrong in disallowing the plaintiff-appellant's claim for the period after Act 78 of 1956 came into force on the sole ground that the plaintiff was being maintained by her mother. In the result, I allow this appeal with costs, set aside the decree of the lower appellate Court, and restore that of the Trial Court.'

12. In the Decision in SONAM TSERING's case one of the Judges of the Division Bench, Bhattacharjee, J., has observed that a mother is no less under a legal obligation to maintain her minor son than the father; But assuming, that the father alone, so long he is alive, is obliged to maintain the son, the mother, who had to maintain the son on her own, can claim reimbursement of the sum spent by her towards such maintenance, or that, the father being also equally obliged to maintain the son, the mother, in such a case, can claim contribution from her co-obliges; but the son obviously cannot make any such claim for reimbursement or contribution.

12. In so far as the rest of the Decisions cited at the Bar are concerned, I find that they do not appear to be on the point.

13. On a careful consideration of the different Decisions I find that the sum total of each Decision is the same. As pointed out by this Court in KANIKI SUBRAYA GOWDA's case, the obligation of father or mother of unmarried daughters or minor son to maintain them is not joint but several. If they are not maintained adequately by either of them, they can certainly make good the deficit by seeking maintenance from the other. The question of double maintenance does not arise in such a situation. Further if the minors* sue either of the parents for maintenance it is not open to either of them to contend that they cannot sue him or her seeking maintenance since they were maintained by the other till then. That is so because, the liability of each of the parents to maintain their unmarried daughters or minor sons is not joint but several as pointed out in KANIKI SUBRAYA GOWDA's case.

14. In the instant case, it is noticed that the mother of the plaintiffs is a School Teacher. It is elicited in her cross-examination that her salary is Rs. 1100/- p.m. as on the date of her deposition. The father is also a Government servant earning Rs. 1000/- p.m. Apart from the salary, he is also shown to have certain income by way of rent. In this connection it will suffice if a reference is made to para-18 of the judgment of the First Appellate Court. The learned Judge therein, has held as under:

'The learned Counsel for the appellant contended that the maintenance claimed at the rate of Rs. 85/- per month without taking into consideration of the fact that the plaintiffs' mother (PW-1) was also working as a teacher drawing monthly pay of more than Rs. 1,000/-. It is contended that the appellant has to maintain his 2nd wife and 4 children born to him through his 2nd wife. Further it is contended that PW-1 the mother is also equally responsible to maintain the plaintiffs. In my view, the defendant apart from his monthly salary of Rs. 1,000/- was also getting Rs. 700/- per month towards rent from his house property at Bijapur as stated by PW-1 at para-7 of her evidence. Further she has stated that the defendant was also having agricultural land and was deriving income from the land to the extent of 15-20 bags of grains per year. Ex.P.1 to 3 are the CTS Register Extracts of house

properties, Ex.P.4 is the R of R extract of the land R.S.No. 612 of Bijapur Kasba, After perusing Ex.P.4 it goes to show that the land stands in the name of mother of defendant. However, the fact that the defendant was receiving monthly rent of Rs. 700/- from the house properties is not denied by him specifically in his evidence. The amount of Rs. 1000/- which the PW-1 was receiving was not sufficient for her maintenance and to maintain her children. The defendant at para-3 of his evidence stated that his 1st son Basavaraj from his 2nd wife has been appointed as Manager in Vysya Bank and is serving at Bijapur and his 2nd son Shivasharan also from his 2nd wife is appointed as Clerk in the same Bank at Bijapur. Thus, it is clear that the 2 sons of the defendant from his 2nd wife were employed. The plaintiffs are having no independent source of income. Taking into consideration of the earnings and financial capacity of the defendant and the requirements of the plaintiffs, I am of the considered view that the discretion exercised by the Trial Court in awarding maintenance at the rate of Rs. 85/- p.m. to each of the plaintiffs, is just and reasonable. Accordingly, I answer point No. 2 raised for consideration and determination, in the negative.'

It is necessary to notice here that what is awarded is Rs. 85/- p.m. to plaintiffs-1 and 2 (daughters) from the date of the suit till the date of their marriage and in the case of son the same amount is decreed from the date of the suit till he attains majority.

15. At this juncture, it is necessary to notice that under Section 3(b) of the Hindu Adoptions and Maintenance Act (hereinafter referred to as the Act) 'maintenance' includes - (i) in all cases, provision for food, clothing, residence, education and medical attendance and reatment; (ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage.

16. It is needless to say that having regard to the rising cost of living at the relevant point of time, which the Court can indeed take Judicial notice atleast Rs. 250 to 300/- p.m. if not more, would be required for the maintenance of the children like the plaintiffs, the expression 'maintenance' being understood as defined in Section 3(b) of the Act. The question of adequacy is not to be tested by the fact that they were not subjected to abject starvation, but the same will have to

be tested by the standard reflected in the definition of 'maintenance.' In the instant case, it is also noticed that plaintiffs-1 and 2 were married during the pendency of the suit itself and even an amendment in the cause title showing them as the wives of their respective husbands is effected. It is necessary to mention here that reasonable expenses of and incidents to their marriage also would come under the definition of 'maintenance'. Looked at from any point of view and from any angle, therefore, it is not at all possible to say that the plaintiffs were adequately maintained. Even otherwise, as pointed out earlier, it is not open to the defendant to say that because they were maintained till the date of the suit by the mother they should be continued to be maintained by her only. Such cannot be the stand of the defendant because, as pointed out earlier, the liability of each of the parents is several. Further the amount of Rs. 85/- p.m. awarded to each of the plaintiffs for the period specified in the operative portion of the order from the date of the suit cannot be construed as constituting double maintenance also. It will suffice if it is stated that the same amount if at all would constitute only as a fraction of adequate maintenance, Further it is noticed that the amount is ordered to be paid from the date of the suit till the cut off date, that is to say, till the date of marriage in the case of plaintiffs- 1 and 2 and till the date of attaining majority in the case of plaintiff-3. Under these circumstances, the ground raised in the Appeal Memo that married daughters are not entitled to maintenance is not tenable. The maintenance awarded as stated earlier, is for the period running from the date of the suit till the date of their marriage. The fact that plaintiffs are subsequently married will not have any effect with reference to the maintenance till the date of their marriage. Under these circumstances, I have no hesitation whatsoever in holding that the amount decreed by the Trial Court and confirmed by the First Appellate Court is valid in law.

17. In so far as the other questions, viz., as to whether plaintiffs were born to defendant through their mother Drakshayini and whether divorce alleged by the defendant is established and matters incidental to the same are concerned, it is needless to say that this Court cannot go into these aspects in a Second Appeal when there is concurrent finding with reference to those aspects.

18. In the result, this Appeal is liable to be dismissed. Accordingly, the same is dismissed, I make no order as to costs.