

Leelamma Vs. Govindappa

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Court : Karnataka

Decided On : Aug-04-1995

Reported in : I(1996)DMC82; ILR1995KAR2589; 1995(4)KarLJ448

Judge : Krishna Moorthy and ;Kuranga, JJ.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 25

Appeal No. : M.F.A. No. 1068 of 1989

Appellant : Leelamma

Respondent : Govindappa

Advocate for Def. : S. Siddappa, Adv.

Advocate for Pet/Ap. : S.R. Krishna Kumar, ;S.V. Raghavachar and S.V. Narasimhan, Adv.

Disposition : Appeal allowed

Judgement :

Krishna Moorthy, J.

1. The plaintiff who is the wife of the defendant is the appellant. The Suit was originally filed before the City Civil Judge, Bangalore, for enhancement of maintenance both past and future.

That on the establishment of the Family Court, the Suit was transferred to the Family Court.

2. Shortly stated, the facts necessary for the disposal of the Appeal, are as follows:

The plaintiff is the wife of the defendant. She filed a Suit as an indigent person before the Munsiff Court, Kolar, in O.S.No. 409/71 claiming maintenance at the rate of Rs. 250/- per mensem towards maintenance and also for recovery of past maintenance of Rs. 4,500/-. That suit was decreed on 3.9.1973. The defendant preferred an Appeal in R.A.No. 176/73 but it was also dismissed. The defendant preferred an Appeal in R.S.A.No. 233/76 before this Court and the said Appeal was also dismissed. According to the plaintiff, the defendant has failed to comply with the decree for maintenance and she has filed an Execution Petition for realisation of the amount. It is her further case that, he has not paid maintenance from March, 1983. Reserving her right to recover the amount, the present Suit is filed for enhancement of the maintenance amount from Rs. 250/- to Rs. 1,000/- and also for past maintenance at that rate for a period of three years from the date of institution of the Suit. The plaintiff has alleged in the plaint that the amount of Rs. 250/- fixed by a decree of the Court was on the basis of the income which the defendant was getting at the relevant time. It is further alleged that the cost of living has increased steeply and the amount of Rs. 250/- per mensem granted in the earlier Suit is insufficient for her maintenance. She requires Rs. 1,000/- per mensem for her maintenance in the changed circumstances. It is further alleged that the defendant is drawing more than Rs. 3,000/- per month now besides Rs. 1,000/- from his building by way of rents, at Kolar. Accordingly, the plaintiff has claimed enhanced maintenance at the rate of Rs. 1,000/- per month and has claimed past maintenance at that rate for a period of three years immediately preceding the Suit. Accordingly, she filed a Suit for recovery of enhanced past maintenance of Rs. 27,000/- and further maintenance of Rs. 750/- per mensem being the enhanced rate of maintenance.

3. The defendant filed a written statement admitting the relationship of the plaintiff and has raised various contentions which are not relevant for the purpose of the disposal of this Appeal. He has also denied the claim of the plaintiff that she is

entitled for enhanced maintenance both past and future. It is further contended by him that the present suit should have been filed in the Court where the previous decree was passed and the Suit filed in the present Court is not maintainable.

4. On the plea of the defendant, a preliminary issue seems to have been raised by the Family Court, to which, the case was transferred, as to:

'Whether the suit filed by the plaintiff is maintainable?'

5. The Family Court after considering the contentions raised by the learned Counsel on both the sides, came to the conclusion that the remedy of the plaintiff is to file another Suit for modification of the previous decree if there is any changed circumstances, in the very same Court, which passed the previous decree. It was further held that the plaintiff, cannot re-agitate the same relief before another Court and if at all, she has to re-agitate her grievances, she has to approach the same Court where the previous decree was passed. Accordingly, it was held that the present Suit is not maintainable and consequently, dismissed the Suit. The Appeal is against the aforesaid dismissal of the Suit.

6. Learned Counsel for the appellant contended that the remedy of the plaintiff is to file a separate Suit for enhanced maintenance which she is entitled to under Section 25 of the Hindu Adoptions and Maintenance Act if the conditions mentioned therein are satisfied. He further contended that it is not necessary that the Suit should be filed in the very same Court where the previous decree was passed, but she is entitled to file the Suit in any Court which has jurisdiction over the subject matter.

7. The lower Court while considering the matter, has considered the question of res judicata by virtue of O.S.No. 409/71 and has also relied on certain Supreme Court Decisions where the principles of res judicata have been considered. But we do not think that the principles of res judicata can have any application to the facts of this case, for, under Section 25 of the Hindu Adoptions and Maintenance Act, the amount of maintenance, whether fixed by a decree of Court or by agreement, may be altered subsequently if there is a material change in the circumstances justifying such alteration. The present Suit is filed by the plaintiff on the allegation

that there is material change in the circumstances and that, she is entitled to enhancement of maintenance already granted by the Munsiff Court, Kolar. The question whether she is entitled to enhanced maintenance is a matter to be decided in that Suit as the right for claiming enhanced maintenance is statutorily granted to the plaintiff under Section 25 of the Hindu Adoptions and Maintenance Act and there is no question of res judicata arising in the Suit and the Suit will have to be decided on its own merits and if the plaintiff satisfies the Court that the enhancement is called for, in the circumstances of the case, she will be entitled to the same. No doubt, the Family Court has not entered a definite finding on the question of res judicata but as the Court referred the same, we are expressing the view that there is no question of res judicata involved in the case as there is a statutory right for the plaintiff to file such a Suit if she satisfies the other conditions necessary for the same.

8. The further question to be considered is, as to whether the finding of the Family Court that the Suit presently filed is not maintainable is correct. As stated earlier, the Suit was originally filed in the City Civil Judge's Court, Bangalore and it was transferred to the Family Court on the establishment of the same. It is an admitted fact that there is no provision in the previous decree for making application for variation of the decree. Accordingly, it is clear from the Decision in *MENOKABALA DASI v. PANCHANAN SEAL*, : AIR1966 Cal228 and *BINDA PRASAD SINGH v. SMT. MUNDRIKA DEVI AND ANR.*, : AIR1968 Pat196 , that the remedy of the plaintiff in such cases, is to file a separate Suit for enhanced maintenance. The Family Court has also, more or less, found the same, but the Family Court has dismissed the Suit on the ground that the second Suit has to be filed in the very same Court which has passed the earlier decree. We do not find our way to agree with this finding. Admittedly, the earlier Suit was filed in the Munsiff's Court which has its own pecuniary limitations in regard to its jurisdiction. It cannot be disputed that the plaintiff is entitled to file a second Suit which can be filed only in a Court having jurisdiction. If the present claim does not come within the pecuniary jurisdiction of the Munsiff's Court, certainly, the plaintiff will not be entitled to file a Suit in the very same Court, but will have to be filed in the Court which has pecuniary jurisdiction over the subject matter of the claim. Accordingly, it cannot be laid down as a general rule that the second Suit, for enhancement of

maintenance has to be filed before the Court which passed the earlier decree. There may be cases as stated above, where the second Suit could not be filed in the very same Court due to want of pecuniary jurisdiction or other reason. If the defendant has changed his residence and is residing in another place, certainly, the plaintiff will be entitled to file a second Suit in the Court within whose jurisdiction the defendant is residing and the Court will have the jurisdiction to entertain the Suit. In this Suit, it has to be noted that the claim of the plaintiff is for past maintenance of Rs. 27,000/- and for enhancement of maintenance already granted by another sum of Rs. 750/-. At the time when the Suit was instituted, the Munsiff's Court, Kolar, could not have entertained the Suit, for, it had no jurisdiction to entertain such suit. The parties have no case that the lower Court has no jurisdiction to try the Suit apart from the above contention. In that view of the matter, we reverse the findings of the Family Court that the Suit filed is not maintainable and that, it has to be filed before the concerned Court which passed the previous decree. We also hold that the plaintiff, in such circumstances, will be entitled to file a second Suit for enhancement of maintenance in any other Court having jurisdiction over the subject matter (either pecuniary or otherwise) and the present Suit before the City Civil Court, Bangalore, is maintainable. On the establishment of the Family Court, the Suit was transferred to the Family Court and it has certainly jurisdiction to entertain and to try the Suit.

9. As stated earlier, the defendant has no case that there is any want of jurisdiction for the Court, in which, Suit is filed apart from the above plea raised by him. In view of what is stated above, we set aside the dismissal of the Suit by the Family Court and hold that the Suit is maintainable. The dismissal of the Suit is set aside and the matter is remitted back to the Family Court for trying all the issues in the Suit on merit.

The Appeal is allowed as indicated above.

The appellant/plaintiff will be entitled to her costs from the defendant, in this Court.