

Nagamma and Another Vs. Ningamma

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Court : Karnataka

Decided On : Feb-23-1999

Reported in : II(1999)DMC681; ILR1999KAR2366; 1999(5)KarLJ609

Judge : K.H.N. Kuranga, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 25 and 37

Appeal No. : Civil Revision No. 2458 of 1995

Appellant : Nagamma and Another

Respondent : Ningamma

Advocate for Def. : Sri Basavaraj Kareddy, Adv.

Advocate for Pet/Ap. : Sri Ajit J. Gunjal, Adv.

Judgement :

ORDER

1. Heard the learned Counsel for the petitioners and the Counsel for the respondent.
2. The petitioners are the judgment-debtors in Ex. P. No. 72 of 1993 on the file of the Munsiff, Chithapur. They have in this petition challenged the order dated 4-7-1995 passed by the Court below holding that the decree for maintenance obtained by respondent against her husband Chandappa does not extinguish with the death

of Chandappa and the decree-holder can create charge over the schedule property and recover the arrears of maintenance of Rs. 4,760/- from the judgment-debtors who are the L.Rs of the deceased husband of the decree-holder and also the decree-holder is entitled to claim subsequent maintenance amount from the Judgment-debtors.

3. It is an admitted fact that the respondent has obtained a decree for maintenance against her husband Chandappa Jedi and filed the present execution case. The contention of the petitioners is that after the death of Chandappa, the husband of the respondent, the decree for maintenance obtained by the respondent gets extinguished and the same cannot be executed.

4. In law, a maintenance decree would not make any difference. It is one of the settled principles of interpretation that the Court should lean in favour of sustaining a decree and should not permit the benefit under the decree to be lost unless there be any special reason for it. If the husband has left behind an estate at the time of his death there can be no justification for the view that the decree is wiped out and the heirs would succeed to the property without the liability of satisfying the decree. There is no rationality in the contention that a decree for maintenance or alimony gets extinguished with the death of the husband when any other decree even though not charged on the husband's property would not get so extinguished. A decree against the husband is executable against the estate of the husband in the hands of the heirs and there is no personal liability. The decree indicates that maintenance was payable during the lifetime of the widow. To make such a decree contingent upon the life of the husband is contrary to the terms and the spirit of the decree.

5. The Supreme Court in the case of Mrs. Aruna Basu Mullick v Mrs. Dorothea Mitra, has held thus:

'A decree for alimony passed under Section 37 does not extinguish with the death of the husband - judgment-debtor. The assets left behind by him are liable to be proceeded against in the hands of his legal heirs for satisfaction of the decree for maintenance'.

Therefore, I am unable to accept the contention urged on behalf of the Counsel for the petitioners.

6. The learned Counsel for the petitioners submitted that the respondent has filed a suit against the petitioners and others for partition and separate possession of the properties of the husband of respondent and therefore she is not entitled to execute the decree obtained by her.

7. Admittedly, the suit filed by the respondent for partition and separate possession of the property of her husband is still pending. In the circumstances, it is difficult to accept the contention of the learned Counsel for the petitioners at this stage.

8. In view of the judgment of the Supreme Court in the aforesaid case, the impugned order passed by the Court below is proper and it is not a fit case for interfering with the order passed by the Court below. Hence, the petition is liable to be dismissed and accordingly, it is dismissed.