

Rachappa and ors. Vs. Sujata and ors.

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Court : Karnataka

Decided On : Dec-08-2004

Reported in : I(2005)DMC735; 2005(1)KarLJ474

Judge : R. Gururajan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 and 103; Hindu Adoptions and Maintenance Act, 1954 - Sections 18(2), 23 and 25

Appeal No. : Regular Second Appeal No. 195 of 2004

Appellant : Rachappa and ors.

Respondent : Sujata and ors.

Advocate for Pet/Ap. : G.S. Kannur and ;G.M. Chandrashekhar, Advs.

Judgement :

ORDER

R. Gururajan, J.

1. This appeal is by defendants and they are before me challenging the judgment and decree dated 23-12-1995 passed in O.S. No. 125 of 1990 by the learned Munsiff, Basavana Bagewadi, confirmed in appeal No. RA 30 of 1993 by an order dated 30-1-2004 passed by the learned Civil Judge (Senior Division), Basavana Bagewadi.

2. Facts in brief are as follows: Respondent-Sujatha, wife of Rachappa Kotagi filed O.S. No. 125 of 1990 seeking maintenance on the ground that she is the legally wedded wife of the first appellant. She states that she gave birth to a female child through first appellant. She stated that she had suffered ill-treatment and ultimately she was driven out of her matrimonial home. Matter was contested. Learned Trial Judge decreed the suit and granted maintenance of Rs. 300.00 per month. The said order was unsuccessfully challenged before the Appellate Court. Concurrent findings of both the Courts are challenged in this appeal.

3. Sri Kannur, learned Counsel for the appellants would argue that the impugned orders require my interference. He says that no issue as such was framed in terms of the Hindu Adoptions and Maintenance Act, 1954 and that therefore both the orders suffer from infirmity.

4. In the course of arguments, a question was posed to the learned Counsel as to whether this Court has jurisdiction under Section 100 of the CPC, 1908 to enhance me maintenance.

5. Learned Counsel in response to the query put by the Court argued at great length to say that the jurisdiction of this Court is very limited under Section 100 of the CPC. This Court can only accept or reject the appeal in the event of no question of law arising in the judgment in question. This Court cannot in the absence of any appeal at the instance of other party can reconsider the findings given by the Courts below. He says that this Court is to consider only an appeal filed by a litigant and this Court cannot extend its jurisdiction by way of enhancement of compensation in the matter by way of granting an additional relief to the litigant in the absence of any appeal at the instance of that party.

6. After hearing I have carefully perused the impugned order.

7. Material facts would reveal that the respondent claiming to be wife filed a suit seeking for maintenance. Learned Trial Judge framed six issues and he has answered them in para 6 of his judgment. Learned Trial Judge after noticing the evidence on record has chosen to give a finding that the respondent-plaintiff is the wife of first defendant. He has also considered the evidence with regard to Issue 3

and he has answered the same in the affirmative. Ultimately he has granted a sum of Rs. 300.00 to the respondent-wife. This order was challenged before the Appellate Judge. Learned Appellate Judge has framed four points for consideration, and, thereafter he has chosen to accept the finding of the learned Trial Judge. He has confirmed the order passed by the learned Trial Judge. No issue under Hindu Law is necessary in the given set of facts.

8. After hearing the learned Counsel and on the facts and circumstances of the case, it cannot be said that there is no marriage at all as argued by the learned Counsel. Both the Courts have accepted the marriage issue in favour of the plaintiff-respondent. Orders are based on facts.

9. I find from the records that the maintenance by way of a sum of Rs. 300.00 has been granted to the wife. Respondent is staying with her parents. It is on record that the appellants seems to have some property in terms of the finding on Issue 2. Rs. 300.00 in these hard days, to say the least, is meaningless even to have one meal a day. In these hard days, Rs. 300.00 in my view is as good as no maintenance at all in terms of the maintenance laws. Maintenance is granted to keep his/her body and soul together. With a sum of Rs. 30000, I do not think that there is any possibility for anybody to maintain body and soul together. Therefore, to my mind grant of a meagre sum of Rs. 300.00, to say the least, is wholly unjust in the given circumstances. Therefore, I am clearly of the view that this paltry sum of Rs. 300.00 is to be enhanced so that an unfortunate lady can have at least one meal a day.

10. This Court cannot but notice the plight of women in society. After marriage, most Indian women depend upon their husbands for their living. If husband neglects and deserts his wife, where else she should go except to her maternal home. Maternal home conditions in terms of the finding of the learned Judge is so bad in this case that it cannot even be possible for this unfortunate poor wife to contest the quantum of compensation in a Court of law.

11. Claim petition filed in the year 1990 has been disposed of after five long years four months by the learned Trial Judge. The learned Appellate Judge has taken seven long years to dispose this small appeal. This Court has time and again

cautioned in several judgments that maintenance cases should be dealt with as early as possible to wipe the rolling tears of unfortunate women in the society. This is yet again one more case of a prolonged agony of an unfortunate woman in the matter of maintenance. For the money so granted to reach such unfortunate woman, she may again have to file executive proceedings. Therefore, in the present conditions of distress can this Court expect such a helpless woman to file an appeal? Certainly this Court can take judicial notice that such unfortunate women are not to suffer such orders leaving it to their destiny. In such cases can this Court render justice to such the poor destitute woman is the question that requires consideration by this Court.

12. Appellants Counsel argues as mentioned earlier that this Court cannot interfere in a matter like this unless an appeal is filed by the other party. If the other party is not capable of filing an appeal for various reasons, particularly by women in the case on hand, can this Court still be so helpless as not to come to rescue of such hapless women. My judicial conscience compel me to do justice to such hapless woman. In this connection in the light of the power of this Court under Section 100, this Court has to notice other provisions available in the Civil Procedure Code.

13. Section 100 of the CPC provides as under:

'100. Second appeal.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent, shall at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Courts to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question'.

14. Section 103 of the CPC after amendment reads as under:

'103. Power of High Court to determine issue of fact.--In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal.-

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court; or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100'.

15. The Legislature in its wisdom has stated that in a second appeal the High Court, if evidence on record is sufficient, may determine any issue necessary for the disposal of the appeal which has not been determined by the lower Appellate Court or both by the Courts of first instance and the lower Appellate Court. Determination would mean a finding on issue, and that determination depends upon sufficient evidence. Determination also goes with necessity finding for the disposal of the appeal. Section 103 would further be made applicable on wrong determination of the issue. In the case on hand, I find that the second issue of maintenance despite evidence available on record has not been properly determined. This Court is not so helpless as argued by the learned Counsel even in the absence of any appeal at the instance of the aggrieved party. Determination for the disposal of the appeal need not necessarily mean an appeal by an aggrieved party. Even in an appeal filed by one party, if the necessary issue had not been properly determined, this Court can certainly determine that issue to

render justice to other party. Therefore, I am of the view that Section 103(a) of the CPC would provide a power to this Court in certain extraordinary circumstances to determine the said issue after hearing the aggrieved party.

While considering the matter, the Court has to hear the aggrieved party and in the case on hand the husband is already before this Court. He has been heard in the matter. This Court is not granting huge sum. This Court is granting only such sum which can be sufficient to the sustenance of the woman respondent. Payment of Rs. 600.00 per month by the husband would be reasonable as on today. However, this Court has to add a caution that such exercise of power under Section 103 has to be done after careful examination of the material on record.

16. In the circumstances and on the peculiar circumstances of the case, I deem it proper to raise the compensation marginally to Rs. 600.00 as against Rs. 300.00 so that the respondent can live with one or half a meal a day with liberty to her to seek for higher maintenance in subsequent proceedings in a manner known to law. Second appeal is rejected with the above directions.

17. Office to send a copy of this order to the respondent in the interest of justice.

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