

Gorivelli Appanna Vs. Gorivelli Setthamma

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Court : Andhra Pradesh

Decided On : Dec-14-1970

Reported in : AIR1972AP62

Judge : Chinnappa Reddi and ;A.D.V. Reddi, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 12, Rule 6;
[Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18

Appeal No. : Civil Revn. Petn. No. 1855 of 1969

Appellant : Gorivelli Appanna

Respondent : Gorivelli Setthamma

Advocate for Def. : V. Parabrahma Sastri, Amicus Curiae

Advocate for Pet/Ap. : N.V. Ranganadham, Adv.

Judgement :

Chinnappa Reddi, J.

1. This Civil Revision Petition has been referred to a Division Bench by our brother Ramachandra Rao, J. as he was of the view that it raised an important question.
2. Pending decision of a suit filed by the respondent for maintenance, past and future, against her husband, she filed an application, purporting to be under

Section 151, Civil P. C. and S. 18 of the Hindu Adoptions and Maintenance Act, for a direction to her husband that he should pay her a sum of Rs. 150/- per month towards interim maintenance. The husband opposed the application as not maintainable as he was contesting her very right to maintenance in the suit. He also submitted that he has already obtained a decree for restitution of conjugal rights against his wife and no award of maintenance could, therefore, be made against him. The learned Subordinate Judge overruled the objection regarding the maintainability of the petition and awarded interim maintenance at the rate of Rs. 30/- per months. Aggrieved by this Order the husband has preferred this Civil Revision Petition.

3. Sri N. V. Ranganadham, learned counsel for the petitioner, contended that the lower court had no jurisdiction to grant interim maintenance in a case in which the very right to maintenance was in contest. He submitted that neither Section 151, Civil P. C. nor Section 18 of the [Hindu Adoptions and Maintenance Act, 1956](#) authorised the award of interim maintenance. The learned counsel for the respondent, on the other hand, submitted that it is the inherent right of every court, under Section 151, Civil P. C. to act on the principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law and that the court may exercise such powers as may be necessary to do the right in the course of the administration of justice. He submitted that the grant of interim maintenance was permitted both by Section 151, Civil P. C. and S. 18 of the Hindu Adoptions and Maintenance Act.

4. Section 151 of the Civil P. c. recognises the inherent, power of the court 'to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court.' The Code itself is intended to regulate the procedure of Courts. Section 151, therefore, is concerned with the, procedure to be followed by the court in deciding the cause before it. The inherent powers recognised by Section 151 cannot extend to matters other than procedural. The court cannot resort to the provisions of Section 151 of encroach upon substantive rights of parties or, in an Interlocutory Application, upon matters which await adjudication in the suit. No order under Section 151, Civil P. C. can be made except 'in aid of the suit.' Such an order may be a step towards obtaining a final

adjudication in the suit or it may be with a view to 'rendering the judgment effective, if obtained.'

Instance of orders which are steps towards judgment are an order adjourning the hearing of the suit, an order advancing the hearing of the suit, an order amending a pleading, an order directing inspection, an order appointing a commissioner in circumstances not covered by Section 75 or Order 26, Civil P. C., etc., Instances of orders made to render the judgment effective, if obtained, are an order granting an injunction in cases not falling under O. 39, an order appointing an interim receiver in cases not falling under Order 40, Civil P. C. etc. That the court has no inherent power to travel beyond matters of the procedure is now settled by a decision of their Lordships of the Supreme Court in *Padma Sen v. State of U. P.*, 0065/1960 : 1961 CriLJ322 . It was observed there

'The inherent powers save by Section 151 of the Code are with respect to the procedure to be followed by the court in deciding cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the court in the matters of procedure, which powers have their source in the Code possessing all the essential powers to regulate its practice and procedure.'

5. The award of interim maintenance pending decision of suit in which the right to maintenance is in contest cannot certainly be called a procedural matter. An order awarding interim maintenance can neither be said to be a step towards final judgment nor intended to render such judgment effective. It cannot be said to be 'in aid of the suit' at all. Such an order cannot be made under Section 151, Civil P. C. It can no more be made in exercise of the inherent powers under Section 151, Civil P. C. than a defendant can be directed to pay straightway to the plaintiff in a suit for money the amount admitted by him to be due to the plaintiff or which the court may prima facie find the plaintiff to be entitled, or a defendant can be directed to deliver straightway to the plaintiff in a suit for possession of several properties, the items

admitted by him to belong to the plaintiff or which the court may find him to be prima facie entitled. In cases where the defendant admits part of the claim of the plaintiff, the latter may ask the court to pronounce judgment and pass a decree to the extent of the admitted claim while postponing adjudication in regard to the rest of the claim.

This is provided by O. 12, R. 6 of the Civil P. C. But even in such cases there must be a judgment and decree finally disposing of the admitted claim. A court cannot by an interlocutory order direct a defendant to pay an admitted amount or delivery an admitted item of property. That can only be done by judgment and decree. Where no part of the claim is admitted the court cannot obviously pronounce a judgment and pass a decree under Order 12. Rule 6, Nor can a court embark upon an interim adjudication in order to make an interlocutory order directing the defendant to pay the amount found to be prima facie due or to delivery properties prima facie found to belong to the plaintiff. If the court makes such an order it would be acting without jurisdiction.

6. In *Abudul Rahman v. Tajunnissa Begum*, : AIR1953 Mad420 the facts were as follows:--- The plaintiff filed a suit for recovery of arrears of maintenance and for future maintenance at the rate of Rs. 500/- per month. She claimed that she was married to the defendant and that the marriage was subsisting,

The defendant contested the suit. He denied that the plaintiff was married to him. He denied his liability to pay maintenance. Pending disposal of the suit the plaintiff filed an application praying for the award of interim maintenance at the rate of Rs. 500/- per month. Panchapakesa Aiyar, J., sitting on the original side of the High Court made an order directing the defendant to pay maintenance at the rate of Rs. 500/- per month. Against that order an appeal was filed under Cl. 15 of the Letters Patent and Rajamannar, C. J. and Venkatarama Aiyar, J. reversed the order holding, that Panchapakesa Aiyar, J., had no jurisdiction to grant interim maintenance when the very right to maintenance was in contest in the suit. After referring to the observations of Horwill. J., in *Latchanna Dora v. Malludora*, (1940) 2 Mad LJ 572; - (AIR 1941 Mad 55). Jackson, J. in C. R. P. No. 1312 of 1930 (Mad); Sir Dawson Miller, C. J., in *Gopal Saran v. Sita Devi*, AIR 1924 Pat 69 and

Viswanatha Sastri, J. in C. R. P. No. 662 of 1950 (Mad), the learned judges observed:---

'Thus there is overwhelming authority for the position that when the claim made in the plaint is contested, the court has no inherent jurisdiction to grant relief until that claim is determined on its merits and that can only be by the final hearing in the suit. To grant any relief in an interim application would be to grant the relief which can properly be granted only by the ultimate determination in the suit and the decree following thereon, The Civil P. C. confers certain powers on the court to grant relief in interim proceedings such as for example, before judgments or appointment of receivers. Where such relief is claimed the Code prescribes the conditions on which such relief could be granted. But apart from such powers, there is no inherent jurisdiction in courts to grant interim relief which properly ought to be granted only by the decree after determination of the points in controversy. We are accordingly of opinion that the order of the learned judge granting interim relief in the suit in which the claim of the plaintiff is hotly contested. was without jurisdiction.:'

7. We express our respectful and complete concurrence. We also agree with the observations of Jackson. J. and Sir Dawson Miller, C. J., which were extracted by the learned judges. The learned counsel for the respondent drew pointed attention to the last sentence in what has been extracted by us and urged that it was only in cases where the claim of the plaintiff was 'hotly contested' that the court would have no jurisdiction to grant interim maintenance, but that in cases where the court was able to come to a prima facie conclusion without any difficulty the court would have jurisdiction to grant interim maintenance. We are unable to agree with the learned counsel. What the learned judges stated in the sentence on which reliance was placed by the learned counsel was the fact that in the case before them the suit was 'hotly contested.' It was no more than a statement of fact. They were merely describing the particular contest between the parties to that suit and they certainly did not lay down that the jurisdiction of the court depended on the heat of the contest. The ratio decidendi of the case is clear from the first sentence; 'Thus there is overwhelming authority for the position that when the claim made in the plaint is contested, the court has no inherent jurisdiction to grant relief until that

claim is determined on its merits and that can only be by the final hearing of the suit.'

8. The decision in : AIR1953 Mad420 (Supra) was followed by the Mysore High Court in Muli Mani Sanna Basava Rajappa v. Basavanappa, AIR 1959 Mys 152. and the Orissa High Court in Venkataratnam v. Kakinada Kamala, : AIR1960 Ori157 . IN Subramonia Iyer v. Padmavathi Ammal, AIR 1954 Trav-Co 123, a learned single judge, of the Travancore-Cochin High Court while agreeing that an order awarding interim maintenance could not be made under Section 151, Civil P. C. held that such an order could be made under Order 12, Rule 6. Civil P. C. We have already pointed out that Order 12, Rule 6 does not contemplate the passing of interim orders but empowers the court to pass judgments and decrees in respect of admitted claims pending disposal of adjudication of the disputed claims in a suit. In Muniammal v. Ranganatha Nayagar, AIR 1955 ad 571, Ramaswamy, J., attempted to explain away the decision in : AIR1953 Mad420 on the ground that the learned judges were there dealing with a case where the right to maintenance was 'hotly contested' we have already expressed our view that the ratio decidendi of the case cannot be confined to cases of keen contest.

9. A somewhat different note was struck by Datta., J., in Gouri Gupta v. Tarani Gupta, : AIR1968 Cal305 and by Ray and Mukherjea, JJ., on appeal from the judgment of Datta, J. in Tarani Gupta v. Gouri Gupta, : AIR1968 Cal567 . Datta, J., distinguished Abdul Rahman's case, : AIR1953 Mad420 as Ramaswamy, J., did not ground that it was a case of keen contest. The learned Judge said:

'In considerable cases where on the materials before it, the court finds no difficulty in assessing the reasonable maintenance and where the marriage is not hotly contested the court should make an order for interim maintenance in the interests of justice by invoking the powers under Section 151 of the Code of Civil Procedure.'

In the light of our earlier discussion we are unable to agree with these observations. The learned judge also thought that the provisions of Section 18 of the Hindu Adoptions and Maintenance Act empowered the court to award interim maintenance. We respectfully disagree. Sec. 18 of the Hindu Adoptions and

Maintenance Act is as follows:---

'18 (1) Subject to the provisions of this section a Hindu wife, whether married before or after the commencement of this Act. shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiture of her claim to maintenance.

(a) if he is guilty of desertion

(b) if he has treated her with such cruelty

(c) if he is suffering from a virulent form of leprosy

(d) if he has any other wife living

(e) if he keeps a concubine in the same house

(f) if he has ceased to be a Hindu.

(g) if there is any other cause justifying her living separately.

(3) Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.'

Section 18 merely cloths a Hindu wife with the right to be maintained by her husband. It may be more correct to say that Section 18 recognises the right of a Hindu wife to be maintained by her husband since she possessed such a right even under the Hindu Law. Where the husband fails to discharge the obligation of maintaining his wife, the wife can enforce her right to maintenance by institution an appropriate action. To such an action the defendant may have several defences. He may deny the marriage itself. He may deny that the marriage is subsisting. He may plead that the wife is unchaste or has ceased to be a Hindu. He may plead that the wife is living separately from him without any just cause. All these questions, if pleaded. will have to be decided in the suit. Maintenance can be

awarded by the court only after adjudication of the questions involved in the suit. If the wife succeeds she will be awarded maintenance from date of suit or even earlier, as the case may be. There is no question of the husband taking advantage of the filing of the suit and stopping maintaining the wife, as Datta, J., seems to have thought, since, if the wife establishes her claim she will be entitled to recover arrears of maintenance also.

In our view Section 18 does not authorise the award of interim maintenance pending decision on the claim to maintenance in contest in the suit. The right of the wife to be maintained by the husband should not be confused with the power of the court to award interim maintenance pending action for maintenance where such right is in dispute. The court has no power unless statute expressly confers such a power on it. For example a power to award maintenance pendent lite is expressly conferred by Section 24 of the Hindu Marriage Act. The Hindu Adoptions and Maintenance Act does not contain a similar provision. Ray and Mukherjea, JJ., expressed the same view as Datta, J., on appeal. They also added that an order awarding interim maintenance was an order 'in aid of the suit. We do not see how it is. It is not a step towards final judgment. It is not intended to render such judgment effective. In another case *Nemai Chand Jain v. Smt. Lila Jain*, : AIR1968 Cal405 Ray and Mukherji JJ., dealing with the same question said:

'The court has power to make interlocutory orders in aid of a suit. Denial of status does not take away the jurisdiction of the court. Interim maintenance is not an act of exercise of inherent jurisdiction. Interim maintenance is granted as an interlocutory relief in the suit.'

We are unable to agree with the learned Judges Interlocutory relief, as the Judge call it, cannot, in our view, be granted except under express statutory authority. There is no statutory authority to award interim maintenance pending an action for maintenance where the right to maintenance is in dispute.

10. The learned counsel for the respondent relied on *Gulabchand v. Kurji Bhagwanji*, : AIR1962 Guj229 and *Subbaya v. Kandaswami*. AIR 1935 Mad 105 a case under the Guardian and Wards Act and it was held by Bhagwati. J., that the power to award interim maintenance was implicit in the power to direct interim

custody of the minor. That case does not touch the present problem. In the second case also minors were involved. A suit was filed on behalf of two minor sons by their mother against their father for partition of joint family properties. The father admitted that the two minors were his sons and that the properties were joint family properties. His defence was that the suit was not in the interest of the minors. Pending disposal of the suit the trial court granted interim maintenance at the rate of Rupees 25/- per month. Walsh, J., thought that as the plaintiffs were minors and as neither their share in the joint family properties nor their alternative rights to be maintained by their father was disputed, there was no bar to the exercise of inherent jurisdiction under Sec. 151. Civil P. C. to award interim maintenance.

There facts, namely, that the plaintiffs there were minors and their right to be maintained was undisputed, distinguish that case from the present case. In fact that was also how Walsh, J., distinguished the earlier decision of Jackson, J., in C. R. P. No. 1312 of 1930 (Mad). It is unnecessary for us to consider the correctness of Walsh, J's view. It is sufficient to say that Walsh. J. was no considering a case where the right to maintenance was itself in dispute.

11. As a result of the foregoing discussion we hold that the court has to jurisdiction to award interim maintenance pending decision of a suit in which the right to maintenance is in contest. The Civil Revision Petition is allowed but in the circumstances without costs. We are grateful to Sri V. Parabrahma Sastri for assisting us as amicus curiae.

12. Petition allowed.