

Hari Lal Vs. Balvantia and Others

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Court : Allahabad

Decided On : Feb-05-1998

Reported in : 1998(2)AWC1069

Judge : R.R.K. Trivedi and ;R.K. Singh, JJ.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18, 18 (1) and (2), 27 and 28; [Transfer of Property Act, 1882](#) - Sections 39 and 52; Family Courts Act - Sections 19

Appeal No. : First Appeal No. 126 of 1997

Appellant : Hari Lal

Respondent : Balvantia and Others

Advocate for Pet/Ap. : B.C. Rai, Adv.

Judgement :

R.R.K. Trivedi, J.

1. Facts, in brief, giving rise to this appeal are that plaintiff-respondent No. 1 Balwantiya (hereinafter referred to as plaintiff), filed a suit on 25. 11.1980 against Shiv Bachan (now deceased) claiming maintenance at the rate of Rs. 500 per month and she also prayed that a charge of the amount of maintenance be created against the property mentioned at the bottom of the plaint- It was further

prayed that the defendant husband may be restrained by a permanent injunction from transferring the property. The property shown is agricultural property covering an area of 4.345 hectares, situate in village Sarai Dhani, Pargana and Tahsil Sagdi, district Azamgarh. This suit was filed in forma pauperis and thus initially it was registered as Misc. Case No. 233 of 1980. The application of respondent No. 1 to sue as indigent person was allowed by order dated 2.4.1990. The order was challenged in Civil Revision No. 80 of 1990 which was dismissed on 16.10.1993. Thereafter, the suit was registered as Original Suit No. 288 of 1990. During pendency of the suit, Shiv Bachan died on 10.11.1992. However, he executed three sale deeds on 17.2.1988, 27.2.1988 and 9.3.1989, transferring the entire agricultural property in favour of the defendant-appellant and defendants-respondent Nos. 3 and 4 (hereinafter referred to as the defendants). In respect of other movable and immovable properties, a will was executed in favour of defendant respondent No. 2. Consequently, after death of the sole defendant, the aforesaid transferees were substituted as defendants and the plaint was suitably amended claiming maintenance from the defendants and from the property in their possession.

2. The case of the plaintiff was that she is legally wedded wife of Shiv Bachan. The marriage took place during childhood : On attaining majority, second marriage (Gauna) took place and she came to her husband's house and discharged her obligations as wife. Out of this wedlock, she gave birth to one son and two daughters. Her husband, however, later on became addict of intoxicants and also fell in company of bad persons and neglected to maintain the plaintiff and her children. She worked as a labourer and earned livelihood to maintain herself and her children. Other persons feeling pity also helped her. The intention of the defendant husband appeared to be mala fide and he was intending to sell the property in favour of others so that he could be relieved of the responsibility of maintaining his wife and children. The plaintiff belonged to a well-off family and defendant husband was member of this family and his income was not less than Rs. 1,500 per month. She is entitled for the amount of maintenance of Rs. 500 per month so that she may maintain herself and her children according to the standard of the family.

3. After death of the husband, the plaint was amended and Para 10A was added to the effect that defendants in spite of full knowledge of the fact that the burden of maintenance of the plaintiff and her minor children is on the property in dispute and there is no other property to maintain them, they in collusion have got three sale deeds executed in their favour and have also got their names recorded in revenue papers during the pendency of the suit and they are liable to pay the maintenance amount which is a charge against the property. Relief (B) initially claiming decree of a permanent injunction restraining the husband from transferring the property during the life time of the plaintiff was deleted and it was substituted by the relief in the present form claiming maintenance from the defendants at the rate of Rs. 500 per month and also the entire amount from the date of filing of the suit and she claimed payment of the amount from the property.

4. The claim of the plaintiff was contested by defendant No. 2 Govind only by filing written statement which was later on adopted by defendants Nos. 1 and 3 also. The case of the defendants was that the plaintiff is neither a legally wedded wife of the deceased opposite party No. 1 nor his concubine. She had no relations with Shiv Bachan. No child was born out of their wedlock. Shiv Bachan was patient of cancer. He had obtained money from defendants Nos. 2 to 4 for treatment and in lieu of the same he executed sale deeds of his property in favour of defendants and handed over possession. Opposite parties are bona fide purchasers with valuable considerations. The suit is barred by time and also by estoppel and acquiescence. The suit is not cognizable by the Court. The plaintiff had her own income and she is not entitled for any amount of maintenance. The suit is liable to be dismissed.

5. The Court on the pleadings of the parties struck the following issues :

(1) Whether the petitioner Smt. Balwantiya is the legally wedded wife of Shiv Bachan deceased?

(2) Whether the petitioner is entitled to receive maintenance out of the properties of Shiv Bachan and in lieu of such maintenance has a right to have charge over the property of Shiv Bachan?

(3) Whether the transferees had notice of the case between Smt. Balwantiya and Shiv Bachan as well as stay order of the Court? If so, its effect?

(4) Whether the transferees could be bona fide purchasers and with consideration? If so, its effect?

(5) Whether the Court had jurisdiction to decide this suit?

(6) Whether the suit is time-barred?

(7) To what relief, if any, is the petitioner entitled?

6. The plaintiff in order to prove her case examined Ram Bhuj, P.W. 1, and herself as P.W.2. She filed copies of the sale deeds executed by Shiv Bachan in favour of defendant Nos. 2 to 4, copy of the record of rights for the years 1394 to 1402 Fosli. Ex. 1, copies of the voters list. Exs.-5. 6 and 7, receipt of the registered letter. Ex. 8 and order of the High Court. Ex.-9.

7. Defendants, on the other hand, examined Hari Lal, D.W. 1, Ram Palat, D.W. 2, Girdhari, D.W. 3 and Mahadev. D.W. 4. In documentary evidence, they filed copies of the Kutumb register, Ex. A-1, copy of Khatauni for 1397 to 1402 Fosli Ex. A-2, medical certificate, copy of application dated 4.8.1969, Ex. A-3, copy of the Kutumb register, Exs. A-4 and A-5 and a photostat copy of the medical report of Shiv Bachan.

8. Learned Family Court decided issue No. 5 on 31.10.1996 and found that he had Jurisdiction to decide the suit and thus decided issue No. 5 in the negative. The Court decided issue No. 1 in favour of plaintiff and found Smt. Balwantiya legally wedded wife of Shiv Bachan. Issue Nos. 2, 3 and 4 were decided together in favour of the plaintiff. It was found that plaintiff has right of maintenance against the property. Defendant Nos. 2 to 4 had full notice of the right of the plaintiff to get maintenance out of the property and this right can be enforced against them under Section 28 of the Hindu Adoptions and Maintenance Act. 1956 (hereinafter referred to as the Act). While deciding issue No. 6, the Court found the suit within time and on the aforesaid findings the suit of the plaintiff was decreed by judgment and decree dated 27.3.1997, aggrieved by which the present appeal has been

filed under Section 19 of the Family Courts Act.

9. We have heard counsel for the appellant and the respondents. Learned counsel for the appellant assailing the impugned judgment of the Family Court has submitted that the findings recorded on issue No. 1 holding the plaintiff legally wedded wife of Shiv Bachan is against the evidence on record and cannot be sustained. It has been further submitted that there is no findings with regard to factum of notice which was necessary for enforcing the right of maintenance against the property under Sections 27 and 28 of the Act. It has also been submitted that the property transferred by the husband during his life time could not be subject to a charge of maintenance after his death. Learned counsel has placed reliance in the case of *Goti Ram v. Kesar Bai* AIR 1930 Bom 47 ; *Lakshman Venkatesh Naik v. Secretary of State* AIR 1939 Bom 183 ; *Controller Estate Duty v. G. Lilawathamba*, 1977 TLR 1111 ; *Sheo Devi Kear v. Uma Shankar* : AIR1963 Pat74 ; *Raghavan v. Nagammai* : AIR1979 Mad200 ; *Mst. Satwati v. Kali Shanker.* : AIR1955 All4 ; *Ramaswamy v. Bhagyammal* : AIR1967 Mad457 and *Jailal and another a. Smt. Dulari*, 1976 ALJ 641.

10. Learned counsel for the plaintiff-respondent, on the other hand, submitted that this suit was filed during life-time of the husband and specific relief was sought to create a charge against the property in dispute with regard to her right of maintenance from the profits of such property and transfer of the property during the pendency of the suit is subject to decree ultimately passed. The transfers are hit by the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act. It is submitted that the rights of the parties are decided on the date of the suit. The sale deeds were executed with a *mala fide* intention to defeat the right of the plaintiff. Learned counsel has also submitted that the findings of the learned Judge, Family Court, are based on evidence on record and do not suffer from any illegality. So as to justify interference by this Court in first appeal.

11. We have considered the submissions of the learned counsel for the parties. The first submission of the learned counsel for the appellant is that the finding of the Court below on issue No. 1 is contrary to the evidence on record. We have gone through the oral and documentary evidence adduced by the parties on this

issue. Ram Bhuj, examined as P.W.1, is aged 65 years. He has stated that he saw the plaintiff in his village since she had come after Gauna. She was married to Shiv Bachan when he was 14-15 years old. He claims that he was member of the marriage party. He has also stated that he witnessed the entire marriage ceremony in the Mandap. He stated that the age of Smt. Balwantiya was then 13 years. He also stated that out of the wedlock of the plaintiff and Shiv Bachan, she gave birth to two daughters and one son. Both the daughters have been married. Shiv Bachan had turned out Smt. Balwantiya from his house 15-16 years before. A Panchayat was held in the village but Shiv Bachan could not mend his ways. He used to reside with his brother Ram Bachan. Plaintiff has no means of livelihood. She is aged about 45 years. She earned her livelihood by selling milk and vegetables and also by working as labourer. He has also stated that there is no body left in her mother's side. Her brothers have died. Shiv Bachan executed sale deeds in favour of his brothers since 7/8 years before. They were aware of the fact that plaintiff has no means of livelihood except the property in dispute. In cross-examination, he has stated that Shiv Bachan had fallen ill about 7/8 years before his death. In cross-examination, nothing has come out on which basis, the statement of this witness could not be believed. The fact of marriage has also been proved by the plaintiff who examined herself as P.W.2. She specifically stated that defendant Nos. 2 to 4 had full knowledge of her right of maintenance from the property and the sale deeds were executed only to defeat her right.

12. In documentary evidence, plaintiff filed voters list of 1988 as Ex. 4. In this voters list Ram Bachan and Shiv Bachan both have been shown as resident of house No. 4. Plaintiff (recorded as Basantlya) has been shown wife of Shiv Bachan. Defendant Nos. 2 to 4, sons of Ram Bachan and Udwat, son of Shiv Bachan, have also been shown as members of the family. Defendants set up a case that plaintiff is wife of Sukkhoo. However, Ex. 3 in voters list of 1995 which shows Abhiraji as wife of Sukhoo and resident of house No. 28. Copies of the F.I.Rs. which are Exs. 5, 6 and 7, were lodged by Smt. Balwantiya before filing the suit in 1976, 1972 and 1979 respectively which also show Smt. Balwantiya as wife of Shiv Bachan. In the voters list of 1995, Ex. 2, also, the plaintiff has been shown wife of Shiv Bachan and Udwat as son of Shiv Bachan. In this document, she has been shown as resident of house No. 17 while defendants Nos. 2 to 4 and

their father have been shown as residents of house No. 16. The defendants' case was that Shiv Bachan was suffering from ailment from the very beginning and he was never married and no issue was born to him. However, this case is disproved by Exs. A-4 and A-5 filed by themselves which show that a son was born to Shiv Bachan though there is also a note on the back of the document that there is no such entry but it is not clear as to how and in what circumstances this endorsement was made. There is no order for deleting the entry. The plaintiffs case was also corroborated by D.W. 2 Rampalat. He admitted that from the union of Shiv Bachan and Smt. Balwantiya, one son and two daughters were born. He also stated that Shiv Bachan turned her out 10-15 years before. Though this witness was turned hostile but that does not mean that his evidence could not corroborate the plaintiffs case. D.W. 4 Mahadev also admitted that he had seen Smt. Balwantiya with Shiv Bachan together 10 years before. This witness thus also supports the relationship between the plaintiff and Shiv Bachan deceased. In view of the aforesaid evidence, it cannot be said that the finding recorded by the learned Family Court was not correct and against the evidence on record. The preponderance of the evidence was definitely in favour of the plaintiff.

13. As we have upheld the finding of the trial court on issue No. 1, the next question is as to whether the maintenance could be awarded to the plaintiff after death of her husband against defendant Nos. 2 to 4. The present suit was filed during the life-time of the husband. The contention of the learned counsel for the appellant was that right of maintenance of the wife against husband is only a personal obligation and it is not against the property of the husband. It has also been submitted that unless the right of maintenance is made a charge against the property during life-time of the husband either by Court decree or by an agreement, such a right cannot be enforced against transferees after death of husband. For deciding this issue, it is necessary to consider the legal position of wife and her right of maintenance from her husband and his property in Hindu Law before and after the Act.

14. Hon. Vishwa Nath Shastri, J. in case of Banda Manikyam v. Banda Venkayamma and others. AIR 1957 AP 710, considered in detail this aspect of the case and summarised the same in the following words :

'This right to separate maintenance which was previously based on texts and decisions is now expressly conferred by statute under Act XIX of 1946. It is true that the husband or father is under a personal obligation to maintain his wife or infant children. This does not mean that the obligation could be enforced only sending him to Jail in case of default and that the wife or infant children have no right to be maintained out of the property of the husband or the father, as the case may be. The rule as to personal obligation only emphasises the legal and imperative duty of the husband to maintain his wife and minor children irrespective of the possession of any property.'

.....

'The Hindu Law Texts and the-important commentaries impose a legal personal obligation on a husband to maintain his wife irrespective of his possession of any property, whether Joint or self-acquired. They recognise the subordinate interest of the wife in her husband's property arising out of her married status. They also prohibit the alienation of properties by the husband which has the effect of depriving her and other dependents of their maintenance. They further treat her as a member of a Hindu joint family entitled to be maintained out of joint funds. The decisions of the various High Courts to the same line, recognize her subordinate interest in her husband's property, and enforce his personal obligation by creating a charge on his properties either self-acquired or ancestral. A wife, therefore, is entitled to be maintained out of the profits of her husband's property and, if so, under the express terms of Section 39 of the T. P. Act, she can enforce her right against the properties in the hands of the alienee with notice of her claim.'

15. Hon'ble Supreme Court in *V. Tulasamma v. Sesha Reddi* AIR 1977 SC 1944, also expressed legal status of wife's maintenance from the property of her husband almost identically. Hon'ble Judges referred to the following passages as regards the nature of the liability of the husband as stated in Hindu Law by Gopalchandra Sarkar Sastri:

'When the husband is alive, he is personally liable for the wife's maintenance, which is also a legal charge upon his property, this charge being a legal incident of her marital co-ownership in all her husband's property. But after his death, his

widow's right of maintenance becomes limited to his estate, which when it passes to any other heir, is charged with the same. There cannot be any doubt that under Hindu Law, the wife's or widow's maintenance is a legal charge on the husband's estate : but the Courts appear to hold, in consequence of the proper materials not being placed before them, that it is not so by itself, but is merely, a claim against the husband's heir, or an equitable charge on his estate ; hence the husband's debts are held to have priority, unless it is made a charge on his estate : hence the husband's debts are held to have priority, unless it is made a charge on the property by a decree.'

Hon'ble Court further observed :

'To sum up, therefore, according to Sastri's interpretation of Shastric Hindu Law the right to maintenance possessed by a Hindu widow is a very important right which amounts to a charge on the property of her husband which continues to the successor of the property and the wife is regarded as a sort of co-owner of the husband's property though in a subordinate sense, i.e., the wife has no dominion over the property.'

.....

'The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has, the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right.'

16. From the aforesaid observations, it is clear that the right of maintenance of wife from husband's property was treated to be an important right against the

property of husband and she on strength of her marital status and the above right was held to be co-owner of the entire property along with husband though in a subordinate sense. After the enforcement of [Hindu Adoptions and Maintenance Act, 1956](#), on 21.12.1956, this right of maintenance stood amended and codified. Chapter III of the Act contains provisions for maintenance of various relations. Section 18 deals with the maintenance of wife. Section 18(1) of the Act provides that a Hindu widow whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time. Sub-section (2) provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance. Clauses (a) to (g) provide such circumstances. In the present case, the suit was filed in the life-time of the husband. He remained alive for about 12 years and contested the suit. Thus, the rights of the plaintiff-respondent are to be decided under Section 18 of the Act on the date on which the suit was filed. Sections 27 and 28 of the Act could not be relevant for this case and, in our opinion, the trial court was not correct in deciding the claim on the basis of Sections 27 and 28 of the Act.

17. Now, the question is whether the right of maintenance could be enforced against the defendants in whose favour the property has been transferred during pendency of the suit. For this purpose, in our opinion, Section 39 of the Transfer of Property Act is the appropriate provision under which the plaintiff-respondent could claim maintenance against the transferees. Section 39 reads as under :

'39. Transfer where third person is entitled to maintenance.--Where a third person has a right to receive maintenance, or a provision for advancement or marriage from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he had notice thereof or if the transfer is gratuitous ; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.'

18. Hon'ble Supreme Court in V. Tulasamma's case (supra), has already held that the right of maintenance of the wife is a pre-existing right and it can be enforced against the property of the husband. In our opinion, for this purpose, it is not necessary that the right of wife to receive maintenance should have become a

crystallised right or enforceable right as provided under Section 27 of the Act in respect of a dependant's claim. After perusal of the provisions contained in Chapter III of the Act, it appears that the maintenance of the wife, widowed daughter-in-law and of children and aged parents have been kept under different footing than the maintenance of dependants who are the relatives of the deceased. In this case, the suit was filed by wife during life-time of husband and not as his widow. Thus on death of the husband, her status as wife and right to receive maintenance could not be affected for the purposes of deciding this suit. Under Section 39 of the T. P. Act, she can enforce her right of maintenance against the property. Finding has been recorded by the trial court that the transferee-defendants had notice of the right of the plaintiff-respondent to get maintenance from her husband. It is admitted case that her husband was living with them and this suit remained pending for about 12 years during his life-time. Thus the defendants must have got full notice of the right of the plaintiff to receive maintenance from her husband as well as the pendency of the suit.

19. It may be noticed that the written statement was filed only by one of the defendants-respondents which was later on adopted by other defendants. In this written statement, there was no pleading that they had no notice of the right of maintenance of the plaintiff. In the absence of such a pleading, in our opinion, the Court below, on the basis of the evidence on record, rightly held that the defendants had notice of the right of the plaintiff to receive maintenance from her husband.

20. The second important aspect for determination is about the nature of the transfer, whether it was for consideration or was it gratuitous transaction? From perusal of the copies of the sale deeds which are on record, it is clear that no consideration passed at the time of registration. It has been mentioned that the entire consideration had been received earlier before execution of the sale deeds. In all the three sale deeds, position is the same. In oral evidence, however, the defendant-appellant, who was examined as D.W.1, has stated in his examination-in-chief that they spent lot of money in his treatment and they also served him and in lieu of that Shiv Bachan executed sale deeds. This statement was recorded on 10.1.1997. In cross-examination, he has stated that the treatment of Shiv Bachan

was continuing for last fifteen years and it continued upto his death. He has further stated that for executing sale deeds, he paid Rs. 60,000 to Shiv Bachan. Other witness, viz. D.W. 2 Ram Palat. has stated that the defendants provided treatment and served Shiv Bachan and they spent money and in lieu thereof Shiv Bachan executed sale deeds in favour of his nephews. D.W. 3 Girdhari has stated that Shiv Bachan and Ram Bachan had common mess. He was not aware when the partition took place. He also stated that sale deed was executed by Shiv Bachan in favour of the sons of Ram Bachan. He was not aware whether plaintiff respondent was turned out from the house by Shiv Bachan 16-17 years before. He could not give any definite statement about the consideration. D.W. 4 Mahadeo stated that at the time the sale deed was executed, Shiv Bachan was ill. Shiv Bachan executed sale deed after accepting money. Shiv Bachan continued to receive money for his treatment. The defendants have not adduced any evidence showing the payment of money from time to time as alleged in the statement. The total consideration for the three sale deeds is Rs. 59,000.

21. In the facts and circumstances of the case, the transfer can only be treated as gratuitous when the evidence of passing consideration is not of any definite nature. Thus, the suit of the plaintiff has rightly been decreed for maintenance under Section 18 of the Act read with Section 39 of the Transfer of Property Act.

22. There is yet another aspect of the matter ; whether the transfer of the property by sale deeds dated 17.2.1988. 27.2.1988 and 9.3.1989 which took place during the pendency of the suit could defeat the right of the plaintiff-respondent to receive maintenance. From the facts and circumstances of the case, it is very clear that the defendants had full notice of the pendency of the suit. Shiv Bachan was with them from the very first day of filing of the suit. The suit was for creating charge against the property for maintenance and also for a permanent injunction not to transfer the property. However, the sale deeds were executed during pendency of the suit. Such sale deeds are hit by doctrine of lis pendens enshrined in Section 52 of the Transfer of Property Act. The defendants-appellant who purchased the property with full knowledge of her right to receive maintenance cannot now be permitted to defeat this important right by purchasing property during the pendency of the suit. The prayer of the plaintiffs-respondents that the maintenance

be charged on the specified properties mentioned in the plaint was sufficient to attract the application of Section 52 of the Transfer of Property Act. It was a suit in which right to immovable property was directly in question. Hon'ble Supreme Court in case of Nagubai Ammal and others v. B. Shama Rao and others : [1956]1SCR451 , held as under in Para 9 :

'On this question, as the plaint in O.S. No. 100 of 1919-20 praying for a charge was presented on 6.6.1919, the sale to Dr. Nanjunda Rao subsequent thereto on 30.1.1920 would prima facie fall within the mischief of Section 52. T. P. Act, and would be hit by the purchase by Devamma on 2.8.1928 in execution of the charge decree.'

'Shri K. S. Krishnaswami Ayyangar, learned counsel for the appellant. did not press before us the contention urged by them in the Courts below that when a plaint is presented in forma pauperis, the (is commences only after it is admitted and registered as a suit, which was in this case on 17.6.1920, subsequent to the sale under Ex. VI--a contention directly opposed to the plain language of the Explanation to Section 52. And he also conceded and quite rightly, that when a suit is filed for maintenance and there is a prayer that it be charged on specified properties, it is a suit in which right to immovable property is directed in question, and the its commences on the date of the plaint and not on the date of the decree, which creates the charge.'

23. Thus, from the aforesaid legal position explained by the Apex Court, it is clear that if the plaintiff was entitled to maintenance from her husband during her life-time and could also pray for a charge to be made against the property, later on transferred in favour of defendants, this right could not be affected by the sale deeds executed during pendency of the suit and the sale deeds are hit by Section 52 of Transfer of Property Act.

24. Learned counsel cited other cases mentioned earlier in support of his contention. We have examined the cases. However, they are not helpful to the appellant in the present appeal. We do not think it necessary to refer all the cases. The opinions expressed in these cases are in different set of facts and the cases are clearly distinguishable.

25. For the reasons stated above, we do not find any merit in this appeal which is being dismissed and the decree passed by the Court below is confirmed. However, there will be no order as to costs.

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