

Tejram Patel Vs. Krutanjali Patel

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Court : Orissa

Decided On : Feb-25-2005

Reported in : 2005(I)OLR707

Judge : L. Mohapatra, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 24; Code of Civil Procedure (CPC)

Appeal No. : W.P. (C) Nos. 8042 and 9132 of 2004

Appellant : Tejram Patel;krutanjali Patel and ors.

Respondent : Krutanjali Patel;tejram Patel

Advocate for Def. : A.K. Choudhury, ;N.C. Pati, ;S. Misra, ;A. Das, ;S.K. Bal, ;N. Singh, ;M.R. Dash and ;B. Dash, Advs.

Advocate for Pet/Ap. : N.C. Pati, ;S. Misra, ;A. Das, ;N. Singh, ;A.K. Choudhury, ;C.R. Behera and ;K.K. Das, Advs.

Judgement :

L. Mohapatra, J.

1. The aforesaid two writ applications arise out of a common order granting maintenance under Section 24 of the Hindu Marriage Act.

2. The petitioner in W.P. (C) No. 8042 of 2004 is the husband of petitioner in W.P. (C) No. 9132 of 2004. The husband filed Title Suit No. 115 of 2001 in the Court of the learned Civil Judge (Sr.Divn.), Sambalpur, praying for dissolution of marriage on the ground that after solemnization of the marriage he was treated with cruelty and also on the ground that the wife was suffering from mental disorder as a result of which it was not possible for them to stay together. Though these are the main grounds on which the suit has been filed under Section 13 of the Hindu Marriage Act, other grounds have also been taken in the suit for dissolution of marriage.

3. During the pendency of the suit, the wife filed an application under Section 24 of the Act claiming Rs. 9,000/-per month towards interim maintenance and Rs. 10,000/- as litigation expenses. The case of the wife is that they have been blessed with three children and because of the litigation and demand of dowry there has been separation. According to her she has no source of income to maintain herself and three children who are reading in school their monthly education expenses comes to Rs. 1,600/- apart from medical and other expenses. It was also pleaded by her that the husband is working as a lecturer in a College and drawing monthly salary of Rs. 5,000/-and has also income from other source such as agriculture to the tune of Rs. 5,000/- per month. The learned Civil Judge (Sr. Divn.) granted maintenance at the rate of Rs. 700/- per month. Challenging the said order the wife filed Civil Revision No. 38/14 of 2003-2004 in the Court of the learned Addl. District Judge, Sambalpur, claiming enhancement of the maintenance. The said revision was allowed on 24.4.2004 and the husband was directed to pay maintenance at the rate of Rs. 1,400/- per month. The order of the learned Addl.District Judge passed in the said revision enhancing the maintenance is the subject matter of challenge in W.P.(C) No. 8042 of 2004. The other writ application filed by the wife i.e. W.P. (C) No. 9132 of 2004 is also for enhancement of maintenance.

4. Shri Mishra, learned counsel appearing on behalf of the husband submitted that the revision filed before the learned Addl. District Judge was not maintainable after amendment of the Code of Civil Procedure and as such, the impugned order passed in the revision is without jurisdiction. The wife who appeared in person on the other hand submitted that enhancement can also be allowed in the writ

application filed by her even if the order passed by the revisional Court is held to be without jurisdiction.

So far as the interim maintenance is concerned, in course of hearing it was submitted by the wife that the husband is earning about Rs. 5,000/- towards salary and also earns about Rs. 5,000/- from agricultural source and, therefore, the total income of the husband per month comes to Rs. 10,000/-. According to her, she is not serving anywhere and has to take care of her three children whose education expenses come to near about Rs. 1,600/- per month.

5. Mr. Mishra submitted that the only income of the husband is his salary that he gets as a lecturer. It was further submitted by Mr. Mishra that the wife is staying in the house of the husband with the children as a result of which the husband has to stay 30 Kms. away from his place of residence taking a house on rent and has to come to Burla every day by bus. Shri Mishra appealed to the Court that these factors may be considered by the Court.

From the discussions made by both the Courts below, it appears that the husband is working as a lecturer in Burla N.A.C. College and as per the version of the wife, the husband is getting Rs. 5,000/- towards salary. Though in course of argument it was submitted by the wife that the husband is getting salary in U.G.C. Scale of Pay but nothing on record has been put in support of such claim. Apart from the above, it appears from the discussion made by both the Courts below that the wife is also earning some amount towards commission as an L.I.C. agent. Though there is some evidence placed before the Court with regard to the existence of landed properties, it is difficult to say the exact income that may come to the share of the husband from the landed properties. Considering the fact that the wife is maintaining three children, I am of the view that the maintenance granted by the learned Civil Judge (Sr. Divn.) at the rate of Rs. 700/- per month is inadequate and should be enhanced. Considering the income of the husband on the basis of the materials placed before the Court as well as the fact that the wife has also some income towards commission as an agent of L.I.C. I am of the view that maintenance at the rate of Rs. 2,000/- (Rupees two thousand) per month would be just and proper. Accordingly, it is directed that the husband will pay maintenance

at the rate of Rs. 2,000/- (Rupees two thousand) per month to the wife from the date of application and the arrear shall be calculated accordingly and paid within six months. Title Suit No. 115 of 2001 pending before the learned Civil Judge (Sr. Divn.), Sambalpur, be disposed of as early as possible preferably within a period of six months from the date of communication of this order.

6. With the above observation and direction, both the writ applications are disposed of.

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