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SooperKanoon Citation : sooperkanoon.com/531087

Court : Orissa

Decided On : Apr-22-1992

Reported in : II(1992)DMC393

Judge : S.C. Mohapatra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : C.R. No. 317 of 1987

Appellant : Kapila Pradhan and ors.

Respondent : Parcha Pradhan and ors.

Advocate for Def. : N.C. Pati, ;A.K. Nanda and ;S.K. Swain

Advocate for Pet/Ap. : Mohakud and ;E.P. Parida, Advs.

Disposition : Petition dismissed

Judgement :

S.C. Mohapatra, J.

1. Defendant Nos. 1 to 3 are the petitioners in this civil revision against an order granting interim maintenance of Rs. 150/- per month.

2. Plaintiff filed the suit that her husband, father of defendant No. 1 had given her about seven acres of land for maintenance in lieu of being maintained by her son (petitioner No. 1). However, the step son remaining in forcible possession of those lands, is not maintaining her. Accordingly, suit has been filed for recovery of possession of the land given by her husband or in the alternative for maintenance by defendant No. 1 and others.

In this suit an application for interim maintenance @ Rs. 1,000/- per month has been filed.

3. Trial Court has directed interim maintenance @ Rs. 150/- per month. This is grievance of the petitioners.

4. Mr. Mahakud, learned Counsel for the petitioners submitted that step son is not liable to maintain step-mother in view of Section 20 of the Hindu Adoption and Maintenance Act, 1956 since the widow has a daughter who is married and is living whose liability it is to maintain her. There being no liability under the law for a step son to maintain a step-mother who can otherwise be maintained, direction of the Trial, Court is exercise of jurisdiction with material irregularity. It is stated by Mr. Mahakud that land measuring seven acres is in possession of the plaintiff and accordingly, she is not entitled to maintenance. It is submitted that besides the income from the land plaintiff has also a shop where from she earns income and is therefore not entitled to interim maintenance.

5. Mr. Mahakud relied upon a decision reported in AIR 1960 Orissa 157 (K. Venkatarathen v. Kokinde Kamala), where it has been held that in case of controversy relating to the liability to maintain, no interim maintenance ought to be granted under Section 151 C.P.C. The said decision has also been followed in A.I.R. 1977 Orissa 96 (Ramchandra Behera and Others v. Smt. Snehalata Dei).

6. Grant of interim maintenance under Section 125 Cr.P.C. is now settled by the Supreme Court in the decision reported in A.I R 1986 S C 984 Smt. Savitri v. Govind Singh Rawat). Same would be the principle also for grant of interim maintenance in a suit for maintenance.

7. In this case, it is not disputed that husband of the plaintiff had property. If the husband would have been alive, plaintiff could have been maintained by her. In absence of the husband, a widow is entitled to be maintained from out of the properties of her husband.

8. In absence of persons having statutory or pious obligation to maintain her, persons who are in possession of the properties of her husband are liable to maintain the widow, if the circumstances so call for. In such circumstances, when there is allegation that defendant No. 1 is in possession of the property given to the widow by her husband towards maintenance in lieu of being maintained by the step son, I am inclined to hold that grant of paltry sum of Rs. 150/- (one hundred fifty) per month ought not to be interfered with which cannot be said to be prejudicial to the defendant No. 1. This would, however, be subject to accounting on the final result of the suit.

9. In result, there is no merit in this civil revision which is accordingly, dismissed.