

Krushna Chandra Nanda Vs. Manorama Devi

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Court : Orissa

Decided On : Apr-17-1986

Reported in : 61(1986)CLT589; 1986(I)OLR579

Judge : G.B. Pattnaik, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18

Appeal No. : Civil Revision No. 592 of 1985

Appellant : Krushna Chandra Nanda

Respondent : Manorama Devi

Advocate for Def. : Manoj Misra, Adv.

Advocate for Pet/Ap. : C.M.K. Murty, Adv.

Disposition : Petition dismissed

Judgement :

G.B. Pattnaik, J.

1. The husband is the petitioner and is defendant in the Court below. The wife filed an application under Section 18 of the Hindu Adoptions and Maintenance Act (hereinafter referred to as the 'Act') and also filed an application for grant of interim maintenance. When the application for interim maintenance was considered, the

husband-petitioner remained absent and the matter was, therefore, decided ex parte. The learned Subordinate Judge came to the conclusion that the appellant was the legally married wife of the respondent and further that the respondent was a qualified Engineer in the service of the Tata Iron & Steel Company. The respondent also admitted in the written statement that he owned sufficient lands and coconut orchard. On consideration of these materials the Subordinate Judge awarded interim maintenance at the rate of rupees two hundred per month from the date of the suit. It is this order of the Subordinate judge which is being impugned in the present revision.

2. Mr. Murty appearing for the petitioner contends that under Section 18 of the Act, there is no power on the Court to grant interim maintenance and accordingly, the order of the Subordinate Judge granting interim maintenance is without jurisdiction. A reading of the provisions of Section 18 of the Act no doubt supports the contention of Mr. Murty, the learned counsel for the petitioner, but in my view the power to make an interim order for maintenance pending an application under Section 18 of the Act is implicit in the section. Such a relief must be held to be ancillary and the power would be necessary corollary to the power of the Court to entertain the application for substantive relief. There have been a series of decision of this Court taking the aforesaid view which in my opinion is also in consonance with the spirit of the law. In the case of Ramachandra Bahara and others v. Smt. Snehata Dai, AIR 1977 Orissa 96, a Bench of this Court held.

'...We agree that there may be cases where taking the extraordinary aspects into consideration, the Court may proceed to exercise inherent powers to grant interim relief. It is not appropriate to set limitations on Court's inherent powers by indicating circumstances where it can be and where it cannot be exercised.....'

Following the aforesaid decision a learned Single judge of this Court in the case of Gajanati Naik v. Dukhanasini Naik and Ors., A. I. R. 1984 Orissa 166, held :

' ...The ratio of the principles laid down in various decisions which have been discussed in this case indicates that when the very relationship between the husband and wife is in challenge or there is an order or decree annulling the said relationship it is not a fit case for grant of interim maintenance in exercise of power

under Section 151, C. P. C, before disposal of the suit. On the other hand, in cases where the relationship between the spouses is not in challenge and thesis no exceptional circumstance of a prima facie nature against such relationship the jurisdiction under Section 151., C. P. C., is available to be exercised...'

This decision has been followed in the case of Subash Chandra Biswal @ Biswalo v. Maluni Biswalo 1985 (1) O. L. R. 486 and in the case of Raghunath Behera v. Renubala Sahara and Ors. (Civil Revision No. 751 of 1985, disposed of on 17.3.1986). In the case of Jadumani Padhan v. Kumudini Padhani, A. I. R. 1986 Orissa 10, I have also held to the same effect. In this view of the matter, I do not find any force in the contention of the learned counsel for the petitioner.

3. in the result, this civil revision is devoid of merits and is accordingly dismissed, in the circumstances without any order as to costs.

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