

Jagdish Vs. Hari Singh

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Court : Delhi

Decided On : Aug-30-1984

Reported in : 1985(8)DRJ278

Judge : R.N. Aggarwal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Civil Revision Appeal No. 162 of 1984

Appellant : Jagdish

Respondent : Hari Singh

Advocate for Pet/Ap. : S.R. Yadav and; Hari Singh, Advs

Judgement :

R.N. Aggarwal, J.

(1) This order shall dispose of Civil Revision No. 162/84 Jagdish Kaur v. Hari Singh and Civil Revision No. 263 of 1984 Hari Singh v. Jagdish Kaur since both these petitions have arisen out of the same order.

(2) The parties to these petitions were married long time back. The wife gave birth to four children-three sons and one daughter. The parties are, admittedly, living separate since 1969. The husband Sardar Hari Singh retired as Chief Engineer in

the year 1977. In 1980 the husband filed a petition against the wife for divorce on the ground of cruelty etc. The wife filed an application under Section 24 of the Hindu Marriage Act for grant of maintenance pendente lite and litigation expenses. The wife claimed a sum of Rs. 3000.00 per month as maintenance and Rs. 5000.00 as litigation expenses. The application was opposed by the husband who asserted that the wife is in possession of large income and he claimed a maintenance of Rs. 1000.00 from the wife. The learned trial judge allowed a maintenance of Rs. 200.00 per month with effect from the date of the order and Rs. 330.00 as litigation expenses to the wife.

(3) Against the aforesaid order both the parties have come in revision.

(4) The admitted facts are that the husband at present is receiving a pension of Rs. 1475.00 per month including dearness allowance. The husband owned two houses A-16 Green Park Extension and C-32 Green Park Main. The house A-16 Green Park Extension was in the name of the wife. It seems the husband filed a suit claiming that his wife was only a benamidar and in reality he is the owner of the said property. The husband succeeded in that suit and he obtained possession of the property. The husband in respect of A-16, Green Park Extension entered into an agreement of sale and received Rs. 2,40,000.00 as part of the consideration amount. The husband put the vendee in possession of two-third share of the said property. It seems, earlier to the above agreement the husband had entered into an agreement of sale with another party and received Rs. 20,000.00 as earnest money. The first party has filed a suit for specific performance of the agreement and the said suit is pending. An injunction order was passed restraining the husband from parting with possession of the remaining one-third share and, therefore, the one-third share continues to be in possession of the husband, (according to the husband it is lying vacant). The husband out of Rs. 2,40,000.00 invested Rs. 2,20,000.00 in fixed deposit in Punjab National Bank in the year 1978. The husband stated that he had been receiving about Rs. 1600.00 per month as interest on the said amount. At present, according to the husband he has invested Rs. 2,20,000.00 in fixed deposit in Punjab National Bank, and the said fixed deposit along with interest shall mature for payment in 1985. The interest on the said deposit works out to be little over Rs. 2000.00 per month.

(5) The second house C-32, Green Park Main is partly in possession of the wife and partly in possession of the husband. The wife is in possession of two rooms and she is residing there with her three sons. The daughter was married in 1977. The rest of the house is in possession of the husband. The husband had received about Rs. 48,000.00 as General Provident Fund and a gratuity of Rs. 22,000.00 and this amount the husband alleges was consumed in the litigation in which he is involved by the sister and brother of the wife. The husband alleges that the wife had effected false mortgages in favor of her brother and sister and both the brother and sister had filed suits for recovery of the mortgage amounts which he had to fight. The contention of the wife is that the husband had abandoned her and the children in 1969 and in order to maintain the children she had to raise loans from the brother and sister. It was not disputed before me by Sardar Hari Singh that the three sons and the daughter resided with the mother and she brought them up. He only contended that one of the sons had gone to England in about the year 1971 and returned in 1977. He further stated that another son of his was taken away by the unmarried sister of the wife and she had brought him up. The fact remains that it was the wife who had after 1969 brought up the children, educated them and married the daughter. The husband, of course, stated that he had borne the expenses of the marriage of the daughter.

(6) The husband alleged that the wife had realised the rent of house A-16 from 1969 to 1977 and the rent realised by her during this period amounted to about Rs. 72,000.00 which she had invested in fixed deposit and she was getting an income of about Rs. 700.00 per month as interest. He further stated that the father of the wife was a rich person and he had left to her house C-1 in Sion Sindhi Colony, Bombay from which the wife was getting about Rs. 900.00 to Rs. 1000.00 per month. He further stated that the father of the wife had created a trust and under the will of the father the wife was getting an income of about Rs. 2500.00 to Rs. 3000.00 per month from the trust. The wife in reply stated that whatever rent she got from 1969 to 1977 was spent by her on the education and maintenance of the children. She further denied that her father had left house No. C-1, Sion Sindhi Colony, Bombay to her. She stated that her sister Janki is unmarried and the father had left that house to her. She further denied that her father had created any trust under which she was getting an income of Rs. 2500.00 to Rs. 3000.00

per month.

(7) The learned Additional District Judge accepted the above averments of the wife. I have carefully gone through the petitions and the papers filed along with the petitions and I am in entire agreement with the Additional District Judge regarding his finding on the income of the wife. I find it very uncharitable for the husband to allege that the wife had received rent from the property A-16 Green Park from 1969 to 1977 and put that amount in a bank from where she was getting an income of about Rs. 700.00 per month. Undisputedly, the wife was maintaining and bringing up the children during 1969 to 1977. The only income she had was the rental income from property A-16 and it was a meagre amount of Rs. 900.00 per month. Surely, she must be spending all this amount on the maintenance and education of the children. She further may be taking help from other near relations for maintaining and bringing up the children.

(8) The husband is admittedly getting about Rs. 1500.00 as pension including dearness allowance. He has further a fixed deposit of Rs. 2,40,000.00 which is roughly giving him an income of about Rs. 2000.00 per month. Even believing the husband that in 1982 he had put Rs. 2,20,000.00 in fixed deposit with Punjab National Bank and the said amount along with interest is payable on maturity in 1985, the fact remains that he had an asset of more than Rs. 2,20,000.00 with him which would give him an assured income of about Rs. 2000.00 per month. The husband stated that he is paying income-tax of about Rs. 5000.00 per year. Rs. 2500.00 as house-tax, and he has further set expenses of about Rs. 2500.00 per month. The husband further contended that he has been involved in a number of cases by the wife and he is incurring lot of expense on litigation. The husband admitted that after retirement he did his law and is now a practicing advocate. Mr. Hari Singh further contended that in case the suit filed for specific performance is decreed against him he shall have to refund the amount Along with interest and in that eventuality Rs. 2,20,000.00 Along with the interest shall disappear. Mr. Hari Singh is ignoring the fact that in case the suit is decreed he will get an amount of about Rs. 2,45,000.00 from the purchaser. (According to Mr. Hari Singh the first sale agreement was for Rs. 2,65,000.00). So the decision of that suit in either way shall have no effect on the assets of the husband.

(9) The counsel for the wife stated at the bar that the husband had filed a suit for rendition of accounts and for recovery of Rs. 72,000.00 realised by the wife by way of rent from 1969 to 1977 and the husband had further filed some criminal complaints against the wife and the sons. I am very sorry to observe that Mr. Hari Singh instead of appreciating that the wife had brought up the sons and married the daughter which normally was the moral and legal duty of the father has involved the wife and the children in litigation.

(10) The mortgage suits filed by the brother and the sister are for about Rs. 28,000.00 . The parties instead of indulging in litigation could have easily settled those claims.

(11) The learned Additional District Judge in fixing the maintenance amount and the litigation expenses has observed as under in para 7 of the judgment :

'The petitioner is a pensioner. He has been deep in litigation for rightly or wrongly he feels cheated in life by his own kith and kin. Litigation costs money and from what has been placed on the record by him it is clear that he is in financial straits and still he has to maintain himself keeping in view his background and the official status once he enjoyed. He claims that whereas his income is Rs. 1500.00 or so per month, the expenses are around Rs. 3000.00 to Rs. 4000.00 . This must be so. But then all said and done merely because his expenses exceed his income this would not frustrate the application under Section 24 because that way the very object of Section 24 would be frustrated. All said and done with an eye on his income and with his liabilities and of course his requirements too and keeping in view also the requirements of the respondent I feel that the interests of justice would be best served if the petitioner is directed to pay maintenance pendente-lite to the respondent at the rate of Rs. 200.00 per month with effect from the date of this order besides litigation expenses amounting to Rs. 330.00 . Before lowering the curtain I feel that I owe an Explanationn for not allowing the maintenance from an earlier date. As already noticed above, the petitioner is in financial straits with family tension, old age, frail frame, prolonged litigation and with hardly any sunny prospects. I would be putting the proverbial last straw on his back by increasing the burden. inspire of having weathered stormy seasons he has life in his eyes

and shine on his face. I would hate to see dead eyes and a drooping mouth.'

(12) I regret to say that the learned Additional District Judge has not been fair to the wife in fixing the amount of maintenance and the litigation expenses. He has not considered the hardship and the difficult days spent by the wife. I am unable to understand how the Additional District Judge has observed that the husband is in 'financial straits' and that the payment of the small amount of Rs. 200.00 per month would be 'the proverbial last straw on his back by increasing the burden.' The husband has admittedly an income of more than Rs. 3500.00 per month. Besides, now he is a practicing advocate. The wife has no income at all. She with a small income of Rs. 900.00 per month from 1969 to 1977 brought up the children and arranged the marriage of the daughter. The husband filed a suit against the wife and obtained a declaration that he is the owner of the property A-16, Green Park and obtained possession of the said property. The wife was thereby deprived the income from that property. In my view the amount of maintenance fixed by the Additional District Judge is extremely low. I would fix the maintenance amount at Rs. 500.00 per month and this amount shall be payable by the husband to the wife from the date of the application (i.e. September 1981). It is not without certain amount of hesitation that I am fixing the date for the payment of maintenance from the date of the application and not from the date of the filing of the petition for divorce. The husband shall further pay Rs. 1500.00 as litigation expenses to the wife.

(13) The counsel for the wife stated at the bar that the husband has not even paid the maintenance of Rs. 200.00 fixed by the Additional District Judge.

(14) Before parting with the case I may mention that Mr. Hari Singh who argued the case in person contended that the wife should have paid full court fee on the amount claimed as maintenance and further that he should have been allowed opportunity to produce evidence and the Additional District Judge should not have decided the case only on affidavits. The Additional District Judge has dealt with these contentions of Mr. Hari Singh and I am in agreement with the views expressed by the Additional District Judge on the said contentions. Mr. Hari Singh also contended that the petition filed by the wife is barred by time. Mr. Hari Singh

contended that the petition was barred by two days. The period of limitation for filing a revision petition under the Code of Civil Procedure is 90 days and not 30 days as understood by Mr. Hari Singh. In any case, I am not willing to throw out the petition on this technical ground. Mr. Hari Singh also contended that the wife had moved an application under Section 24 without filing the written statement in the divorce petition and the application under Section 24 was not maintainable without the respondent-wife first filing the written statement. This contention is wholly without substance. The wife was not bound to file the written statement before moving the court for grant of maintenance pendente lite and expenses of the proceedings. The whole object of awarding expenses of proceedings is to enable the party to fight the case.

(15) For the reasons stated I allow the petition of the wife and grant maintenance at Rs. 500.00 per month with effect from the date of the application filed under Section 24. She would be further entitled to Rs. 1500.- as litigation expenses. The petition (C.R. No. 263 of 1984) by the husband is dismissed. The petition is allowed with costs. Counsel fee is fixed at Rs. 5001.

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