

Damodharan Vs. Meera

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Court : Kerala

Decided On : Aug-12-1986

Reported in : AIR1987Ker78

Judge : M.M. Pareed Pillay, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24 and 26

Appeal No. : C.R.P. 161 of 1986

Appellant : Damodharan

Respondent : Meera

Advocate for Def. : P. Vijayabhanu, Adv.

Advocate for Pet/Ap. : M.B. Kurup, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M.M. Pareed Pillay, J.

1. The revision petitioner challenges the order of the Sub-Court, Trichur in I.A. No, 1359 of 1985 in H.M.O.P. 28 of 1985. The respondent (wife) filed the petition claiming ad interim maintenance for herself and her two children and also litigation

expenses from her husband. The learned Sub-Judge allowed that application and the husband was directed to pay Rs. 150/- per mensem as maintenance to his wife and Rs. 75/- per mensem each to his two children. He was also directed to pay Rs. 500/- towards the litigation expenses.

2. The revision petitioner filed H.M.O.P. 28 of 1985 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against the respondent. Admittedly they have two children. The respondent filed I.A. 1359 of 1985 under Section 24 of the Hindu Marriage Act claiming ad interim maintenance of Rs. 1,300/- per month for herself and her two children and also a sum of Rs. 1,000/- towards litigation expenses.

3. The main contention of the revision petitioner is that the children are not entitled to get ad interim maintenance in a petition filed under Section 24 of the Hindu Marriage Act. It is argued that a plain reading of Section 24 of the Act would clearly show that wife or husband alone can claim maintenance pendente lite and expenses of the proceedings and hence it is patent that the order of the court allowing maintenance to the children is wholly unjustified. Counsel relied on AIR 1981 J & K 5 (Puran Chand v. Kamla Devi) and AIR 1982 Orissa 270 (Purusottam DasAgarwala v. Smt. Puspa Devi) in support of the aforesaid contention. Counsel urged that on a plain interpretation of Section 24 of the Act, children are not entitled to get maintenance in a proceeding initiated by either of the spouses. Learned counsel for the respondent submitted that the above decisions have not considered the ambit of Section 26 of the Act and it does not lay down the correct law. Relying on AIR 1981 Kant 115 (Smt. Subhasiniv. B.R. Umakanth), AIR 1976 Kant 215 (Dr. D. Thimmappa v. Nagaveni) and AIR 1982 Andh Pra 100 (Narendra Kumar v. Suraj Mehta) counsel contended that the order of the court below granting maintenance to the children is perfectly in order.

4. The question that has to be considered is as to whether the order of the court granting maintenance to the children of the respondent is legally sustainable. Section 24 of the Hindu Marriage Act empowers the court to grant maintenance pendente lite and expenses of proceedings to either the wife or the husband, as the case may be, when it is found that the person claiming maintenance has no

independent income sufficient for her or his support and to meet the necessary expenses of the proceeding. It is true that Section 24 does not make any mention about granting of maintenance to the children of the spouses. Section 26 of the Act postulates that in any proceeding under the Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children. The decisions reported in AIR 1982 Orissa 270 and AIR 1981 J & K 5 relied on by the petitioner have not considered whether the court could invoke Section 26 of the Act and grant maintenance to the children of the litigating spouses. Section 26 of the Act makes the position very clear that in any proceeding under the Act, the court can pass interim orders and make provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children. A petition filed under Section 25 cannot be considered in isolation and the court cannot altogether ignore Section 26 of the Act in a case where maintenance of the children is also claimed.

In I.A. 1359 of 1965, respondent has claimed maintenance not only for herself but also for her minor children- It is also averred in the petition that her husband was not maintaining them for the past seven-months. When such a petition is filed it is incumbent upon the court to consider the plight of the minor children and not to confine itself within the limits of Section 24 alone. In any proceeding under the Act, the court has ample power to make interim orders and make such provisions as it deems necessary, with regard to the custody, maintenance and education of the minor children. The contention of the revision petitioner that Section 26 applies only to a case where custody of the minor children is mooted is not tenable in view of the plain reading of the Section. In a petition filed under Section 24 of the Act the court can always invoke Section 26 of the Act and grant maintenance to the children of the spouses in cases where it is found necessary.

5. The above view is fortified by the judicial pronouncements of the High Courts of Andhra Pradesh and Karnataka. In AIR 1976 Kant 215 (Dr. D. Thimmappa v. Nagaveni) which is a case initiated by the wife for restitution of conjugal rights and the wife filed interim petition under Section 24 of the Act, without specifically mentioning about her children but clearly indicating in the affidavit that such

maintenance was claimed on behalf of her children also it has been held that the court is entitled to grant maintenance not only to the wife but also to children as provided under Section 26 of the Act. In the above decisions, it is held as follows :

'When a wife claims maintenance and she has children to support, any interim maintenance to wife alone is meaningless if it does not provide for the maintenance of children also.'

AIR 1981 Kant 115 (Smt. Subhasini v. B.R. Umakanth) (Division Bench) it is held as follows :

'Where an application for maintenance was filed under Section 24 with an averment of the existence of minor child the court could make an order awarding maintenance pendente lite in respect of minor child as well as the applicant having regard to the provisions of Section 26 of the Act.'

In AIR 1982 Andh Pra 100 (Narendra Kumar Mehta v. Smt. Suraj Mehta) it is held as follows :

'Having regard to the specific provision contained in Section 26 it cannot be said that no order awarding maintenance to the child can be granted under Section 24 of the Act.'

There cannot be any doubt that though Section 24 refers only to the wife and husband and not the children the court has ample power under Section 26 to make interim order in respect of maintenance of the minor children also. That being the position there is no force in the contention of the revision petitioner that the court below erred in granting maintenance to the minor children of the respondent.

6. It is next contended that the maintenance granted to the respondent and her children is rather excessive. It is the case of the revision petitioner that he purchased 27 cents of land and a rice mill in favour of his wife and that she has got sufficient means to maintain herself and her children. The learned Sub-Judge accepted the affidavit filed by the respondent and finding that she does not have sufficient means to support herself and children granted maintenance to them. The

learned Sub-Judge fixed the maintenance amount considering the status of the parties and taking into account the facts and circumstances of the case. It cannot be said that the maintenance awarded by the court below is in any way excessive.

I find no reason to interfere with the order of the court below. The C.R.P. is dismissed. There is no order as to costs.

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