

**indar Mal Vs. Babulal**

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**Court :** Rajasthan

**Decided On :** Apr-06-1976

**Reported in :** 1976WLN104

**Judge :** P.D. Kudal, J.

**Appeal No. :** S.B. Civil Revision No. 410 of 1976

**Appellant :** indar Mal

**Respondent :** Babulal

**Disposition :** Appeal dismissed

**Judgement :**

**P.D. Kudal, J.**

1. This is a revision petition under Section 115, CPC against the order of the learned Munsiff, Jalore dated June 1, 1074.

2. The facts, which are relevant for the disposal of this revision petition, are that on December 11, 1973 the plaintiff Babu Lal minor filed a suit through his next friend and guardian Paras Mal against his adoptive father Indar Mal for grant of maintenance allowance Defendant, Indar Mal filed his written statement on February 6, 1974 alleging therein that the plaintiff was never adopted by him. On February 28, 1974 the plaintiff filed a rejoinder to the written statement. The

learned Munsiff struck the issues on March 8, 1974. The plaintiff moved an application on February 28, 1974 for grant of interim maintenance. The learned trial Court on June 1, 1974 while deciding the aforesaid application held that the plaintiff is entitled to an interim maintenance of Rs. 100/- p.m. from the date of the institution of the suit, i.e. December 11, 1973 to July 15, 1974 when the plaintiff became major. It is against this order of grant of interim maintenance that the defendant-applicant has filed the present revision petition.

3. It was contended on behalf of the defendant-applicant that the grant of interim maintenance, in the facts and circumstances of the case, has virtually resulted in giving the entire relief to the plaintiff which he would have been found to be entitled at the time of the final decision of the suit; and as such, the learned trial Court acted illegally and with material irregularity in granting such a relief. It was further contended that where the status of the plaintiff-respondent as an adopted son was contested by the applicant, the grant of interim maintenance was an act without jurisdiction, it was also contended that the grant of interim maintenance was not 'an act in aid of the suit', and as such, the learned trial Court lacked inherent jurisdiction to grant this relief as a measure of interim relief.

4. On behalf of the plaintiff-respondent, it was contended that the learned trial Court did not act illegally or with material irregularity in invoking its power for grant of interim maintenance by way of relief when the circumstances of the case so warranted. It was also contended that the defendant-applicant has executed a registered adoption deed in favor of the plaintiff-respondent and that the execution of that deed has not been denied, but it has only been contended that the deed was got executed by way of fraud, coercion or pressure. It was also contended that a court has always inherent powers to grant such relief's which enhance the ends of justice unless the grant of such interim relief is specifically prohibited by an express provision of law.

5. The learned Counsel for the defendant applicant places reliance on Gopal Saran v. Sita Devi AIR 1924 Pat 69, Abdul Rehman v. Tajunnissa Begum : AIR1953 Mad420 , M.S. Basavarajappa v. Basavarmappa AIR 1959 Mysore 152, Venkataratna v. Kamala : AIR1959 Ori157 and G. Appanna v. G. Seethamma :

AIR 1972 AP62 .

6. The learned Counsel for the plaintiff respondent places reliance on Jain v. Jain : AIR1968 Cal405 , Tarici Gupta v. Gauri Gupta : AIR1968 Cal567 , Rukmaniben v. Berwada AIR 1962 Guj 287, Muniammal v. Ranganatha Kayagar : AIR1955 Mad571 , D. Udiayar v. Rajrani Ammal : AIR1973 Mad369 and Surendra Kumar v. Kamlesh : AIR1974 All110 .

7. The respective contentions of the learned Counsel for the parties have been considered and the record of the case carefully perused.

8. The learned Counsel for the defendant-applicant basically places reliance on Abdul Rehman v. Tajunnisa Begum AIR 1959 Mysore 152 wherein it has been held as under:

The Civil Procedure Code confers certain powers on the Court to grant relief in interim proceedings such as for example power to issue injunctions, attachments before judgments or appointment of receivers. Where such a relief is claimed the Code prescribes the conditions on which such relief could be granted. But apart from such powers, there is no inherent jurisdiction in Court to grant interim relief which properly ought to be granted only by the decree after determination of the points in controversy. Therefore in a suit for maintenance by the wife where the claim is hotly contested an order for payment of interim maintenance is without jurisdiction.

9. Their Lordship of the Madras High Court basically relied on the observations of Jackson J. in CRP No. 1312 of 1930, wherein It was observed:

A court cannot interfere with a private person's property merely because he happens to be a defendant, on behalf of another person merely because he happens to be a plaintiff. There is no inherent power in a Court to act without findings, so that if a master is asserted by the plaintiff & decided by the defendant, the Court cannot presume that the plaintiff's allegations are true and give some interim relief pending disposal of the suit.

10. Reliance was also placed on *G. Appanna v. G. Seethama* : AIR 1972 AP62 wherein it has been observed that the inherent power recognised by Section 151 cannot extend to matters other than procedural. The Court cannot resort to the provisions of Section 151 to encroach upon substantive rights of parties or, in an interlocutory application upon matter which await adjudication in the suit. No order under Section 151. Civil P.C. can be made except 'in aid of the suit.' The other rulings cited on behalf of the defendant-applicant support this view of the matter.

11. The learned Counsel for the plaintiff respondent relied on *Jain v. Jain* : AIR1968 Cal405 and *Tarini Gupta v. Gauri Gupta* : AIR1968 Cal567 . In these two rulings their Lordships of the Calcutta High Court held that if there is a prime facie case and if the court is of opinion that the plaintiff is entitled to interim relief the plaintiff may be given such relief. That is not deciding the whole case. The relief asked for in the suit has yet to be determined and decided. Interlocutory opinions do not bind the trial Court.

12. It was further held that, 'If a claim for maintenance is denied that would not take away the jurisdiction of the Court to make interim orders in a suit for maintenance. The jurisdiction of the Court does not depend on the denial of a case by the defendant. It is one thing to say that the court declines to make an order in a case where facts are disputed and quite another thing to say that the court has no jurisdiction to make an order because the claim is contested'.

13. In *D. Udayar v. Rajarani Amal* : AIR1973 Mad369 it was held that in a suit by a wife against her husband for separate residence and maintenance under Section 18 of the Act, where the relationship between the parties is admitted but the claim is contested by the husband, the Court has jurisdiction to grant interim maintenance notwithstanding the absence of a specific provision in the Act. Whatever may be the ground urged by the plaintiff in support of her claim for maintenance, the status of the parties being admitted, the grant of maintenance ultimately is a matter of course. Bearing the general principles in view, namely the acts of Court including its delays ought not to prejudice and cause hardship to any party, the power to make an interim order is implicit, ancillary and a necessary corollary of the power to entertain a suit and pass final orders therein. In this case,

his Lordship of the Madras High Court has taken into consideration the cases of G. Appanna v. G. Seethama : AIR 1972 AP62 , Jain v. Jain : AIR1968 Cal405 and Abdul Rebman v. Tajunnissa Begum : AIR1953 Mad420 .

14. Section 20 of the Hindu Adoptions and Maintenance Act, 1956 reads as under:

20. (1) Subject to the provisions of this section a Hindu is bound, during his or her life time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parent.

(2) A legitimate or illegitimate child may claim maintenance from his or miter father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends to so far as the parent or the unmarried daughter, as the case may be is unable to maintain himself or herself cut of his or her own snaring or property.

15. A perusal of this section would undoubtedly lead to the conclusion that a Hindu father is under statutory obligation to maintain his minor children. In the instant case, the plaintiff has come to the Court of law alleging that he had been adopted by the defendant. In support of his claim for adoption, be has produced a registered-deed of adoption. Section 16 of the Hindu Adoptions and Maintenance Act reads as under:

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

16. It would thus follow that unless the registered deed of adoption has been disproved, a prima facie presumption arises in favour of the plaintiff.

17. The basis question for consideration in this revision petition is, whether a court can grant interim maintenance to a minor son when his vary status as such has

been challenged; especially when such an order for interim relief is not in aid of the suit. It has been strenuously argued by the learned Counsel for the defendant-applicant that there is no provision for grant of interim maintenance to a minor in the Hindu Adoptions and Maintenance Act, 1956.

18. If there is no provision of law permitting the Court to grant interim maintenance, then whether the power to grant interim maintenance can be invoked under its inherent powers. The law was laid down in unambiguous terms in (1882) ILR 5 All 163 (FB) that every procedure is always permitted unless it is forbidden by law. The procedure is designed to sub serve the purpose of justice and is always a means to the end of rendering substantial justice.

19. Grant of Maintenance allowance is always aimed at preserving the existence of an individual who is supposed to be not in a position to support himself. Though, there is no express provision of law in the Hindu Adoptions and Maintenance Act, 1956 for grant of interim maintenance allowance, yet there is no prohibition against such an interim relief being granted As held in D. Udayar v. Rajarani Ammal : AIR1973 Mad369 , the powers to make an interim order is implicit, ancillary and a necessary corollary of the power to entertain a suit and pass final orders thereon.

20. Having given my most anxious consideration, I have no hesitation in holding that the Court has inherent powers to grant interim maintenance in suitable cases. The grant of such interim relief does not in any way prejudice the substantial rights of the parties. To hold otherwise would mean that the very purpose of the suit might be frustrated as the plaintiff petitioner might not be able to sustain the proceeding due to want of means. In this view of the matter I find myself in respectful agreement with the cases. Tarini Gupta v. Gauri Gupta : AIR1968 Cal567 and D. Udayar v. Rajrani Aminul : AIR1973 Mad369 .

21. The plaintiff being minor and holding a registered deed of adoption in his favour has a prima facie case in his favour. The learned trial court exercised a discretion in his favour by granting an interim relief. It cannot be said that the learned lower Court acted illegally and with material irregularity in exercise of the jurisdiction in granting interim maintenance to the plaintiff who was a minor.

22. For the reasons stated above, There is no force in this revision petition which is hereby dismissed. Looking to the facts and circumstances of the case, there will be no order as to costs.

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