

Smt. Puspha Vs. Mahendra

Smt. Puspha Vs. Mahendra

SooperKanoon Citation : sooperkanoon.com/766646

Court : Rajasthan

Decided On : Feb-10-1992

Reported in : 1992(1)WLN130

Judge : Milap Chandra Jain and; B.R. Arora, JJ.

Appeal No. : D.B. Criminal Appeal No. 271 of 1991

Appellant : Smt. Puspha

Respondent : Mahendra

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the order dated August 16, 1990, passed by the Judge, Family Court, Jodhpur, by which the learned Judge of the Family Court dismissed the application under Section 125 Cr. P.C, filed by Smt. Puspha for the grant of the maintenance from her step-son.

2. Smt. Puspha-the step mother of Shri Mahendra-filed an application under Section 125 Cr.P.C. for the grant of maintenance. It was averred in the application that she was married to deceased Pusha Ram-the father of defendant Mahendra. Mahendra has two minor brothers and one minor sister. Mahendra has inherited

several movable and immovable properties from his father deceased Pusha Ram. Pusha Ram died on August 22, 1982, and all the properties of Pusha Ram have been taken-over by Mahendra and after the death of Pusha Ram, the treatment of her in-laws was not cordial and, therefore, she had to leave the house of her in-law in the year 1984, and since then she is living with her brother. She has no independent means to maintain herself and, therefore, it is prayed that the applicant may be awarded maintenance. It was, also, mentioned in the application that earlier, also, an application under Section 125 Cr.P.C. was moved, but the same was dismissed by the learned Judge of the Family Court on June 18, 1989, without properly deciding the controversy. Reliance was placed on the explanation given in Section 2(3) to the word 'parents' in Hindu Adoption and Maintenance Act, 1956. A reply to this application was filed by the defendant Mahendra and it was admitted that she was married to Pusha Ram; her right in the property was, also, admitted, but a stand was taken that the application has been moved in order to harass him, The contents of the application were emphatically denied. It was, however, mentioned that if the property is divided between the co-sharers then he has no objection in giving the share of the petitioner appellant to her for which she is entitled. The learned Judge of the Family Court dismissed the application of the appellant on two grounds, firstly, that the petitioner earlier, also, moved an application under Section 125 Cr. P.C. against the defendant Mahendra and after considering the application on merits, the earlier application was dismissed and no justified cause has been shown in reviewing the earlier order. The second ground, on which the application has been rejected, is that the words 'his mother' used in Section 125 Cr. P.C. do not include the 'step mother'. It is against this order dated August 16, 1990, passed by the learned Judge of the Family Court that the appellant has preferred this appeal.

3. We have heard learned Counsel for the appellant and perused the order, passed by the learned lower Court.

4. Though strictly the provisions of Section 300 of the Code of Criminal Procedure are not attracted in the case of enquiry under Section 125 Cr.P.C. because it is not a trial for any offence, but when an application has already been considered and enquired into and was dismissed by the learned Judge of the Family Court then

the second application on the same facts and allegations is not competent and the court is not expected to make the enquiry of the same facts again. Repeated applications against the same person on the same facts and allegations are not maintainable and in this view of the matter, we are of the opinion that the learned Judge of the Family Court has not committed any illegality in dismissing the application under Section 125 Cr. P.C. filed by the petitioner-appellant on the same grounds.

5. It may, however, be mentioned that the appellant, if she so likes, may approach the Judge, Family Court for the grant of maintenance under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, for which she is entitled and she pursue the remedy under Section 94 of the Code of Civil Procedure for the appropriate relief in the Civil Court, before which the civil suit regarding the partition of the property is pending. But so far as the present case is concerned, as the earlier application of the petitioner-appellant was dismissed and the appellant did not pursue her remedy against that order and, therefore, that order has become final, so far as the present parties are concerned, and the second application on the same grounds is not maintainable.

6. In the result, we do not find any merit in the appeal and the same is hereby dismissed.