

K.M. Adam Vs. Gopalakrishnan

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Court : Chennai

Decided On : Jul-09-1973

Reported in : AIR1974Mad232

Judge : K. Veeraswami, C.J. and ;Raghavan, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 2(1) and 2(3)

Appeal No. : Second Appeal No. 819 of 1969

Appellant : K.M. Adam

Respondent : Gopalakrishnan

Judgement :

1. The subject matter of the second appeal is a maintenance decree against the defendant-appellant obtained by his minor illegitimate son. The appellant is a Mohamedan and the mother of the respondent is a Hindu. A sum of Rs.100 has been decreed as his maintenance. That the respondent was the child of the appellant and that the mother of the child was a Hindu and there was no marriage between the two, has now to be taken as final in view of the findings of the courts below. The outstanding question on which the reference was made by Ismail J. to a Division Bench is whether the respondent in the circumstances could maintain the suit for maintenance against the appellant.

2. It is pressed upon us for the appellant that neither under the personal law of the relative parties, nor the provisions of the Hindu Adoptions and Maintenance Act of

1956, is the respondent entitled to maintenance against the appellant. The claim has to be sustained only with reference to the statutory provisions, if at all, for under the personal law of the appellant, there is no obligation on his part to maintain his illegitimate son by a Hindu concubine. By virtue of clause (b) in the Explanation in Section 2(1) of the [Hindu Adoptions and Maintenance Act, 1956](#), the respondent is and has to be considered as a Hindu because one of his parents, in his case his mother is a Hindu. The Act is therefore applicable to the respondent minor. It is equally clear that it does not apply to the appellant who is a Mohamedan. But sub-sec. (3) of Section 2 is to the effect that the expression 'Hindu' in any portion of the Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom the Act applies by virtue of the provisions in the section. Even this provision may not attract to the appellant the provisions of the Act. The claim of the respondent will therefore depend on his being a Hindu and therefore the rights conferred to him by the provisions of the Act. Section 20 reads as follows--

"(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her 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 in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation--In this section 'parent' includes a child-less step-mother."

The argument for the appellant is that sub-sec. (2) being related to sub-sec. (1), that is the assumption, cannot be regarded as conferring rights on the illegitimate child not within the ambit of sub-sec (1). Under sub-sec. (1) the obligation is thrown on a Hindu to maintain his or her legitimate or illegitimate child. Sub-sec. (2) confers a right upon the legitimate or illegitimate child to claim maintenance

from his or her father or mother, so long as the child is a minor. The obligation under sub-sec. (1) arises by reason of the status of the person, whether the child is legitimate or not and whether a Hindu or not. But sub-sec. (2) looks at the matter from the point of view of the child itself, and if the child is a Hindu, irrespective of whether the father or the mother is a Hindu, it is entitled to claim maintenance against him or her. There are no words in sub-sec. (2) to suggest that a Hindu legitimate or illegitimate child can claim maintenance under sub-sec. (2) only against a Hindu father or mother. The object of the Act is to amend and codify the law relating to adoptions and maintenance among Hindus, and considering the various provisions it has made and the changes, it appears to us it could not be the intention of the Act that a Hindu minor child would be left without the right to maintenance against a Mohamedan father. There is no justification in the language of Section 20 to construe it in such a way that the right conferred under sub-sec. (2) is to be merely a corollary or a consequence of what is provided under sub-sec. (1) by way of an obligation. On that view, we sustain the decree the respondent has obtained.

3. It is said that subsequent to the passing of the decree by the trial court, the appellant has met with bad days and he is not affluent as he then was. Considering the circumstances, we think that the matter should go back to the trial court for a determination of the quantum of future maintenance in the light of the facts to be established by evidence. While we confirm the decree for maintenance, the proceeding will stand remitted to the trial court for fixation of the quantum of future maintenance. Until there is alteration in the quantum of maintenance, the maintenance will be paid according to the rate now obtaining. The second appeal is accordingly ordered. The parties will bear their own costs.

4. Order accordingly.

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