

Baldev Singh Vs. Pooja Devi

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Court : Himachal Pradesh

Decided On : May-23-2006

Reported in : AIR2007HP16,2006(2)ShimLC311

Judge : V.K. Gupta, C.J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 3, 18, 19, 20, 23, 23(2), 23(3) and 25; ;[Hindu Marriage Act, 1955](#) - Section 24; ;Code of Civil Procedure (CPC) - Sections 9 and 21; ;Hindu Law; ;[Constitution of India](#) - Article 227

Appeal No. : C.M.P.M.O. No. 210 of 2005

Appellant : Baldev Singh

Respondent : Pooja Devi

Advocate for Def. : Ajay Sharma, Adv.

Advocate for Pet/Ap. : K.D. Sood and; Sanjeev Sood, Advs.

Judgement :

V.K. Gupta, C.J.

1. In this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the correctness, legality and validity of the

JUDGMENT / ORDER

dated 22nd August, 2005 passed by the learned Additional District Judge (I), Kangra at Dharamshala in Civil Miscellaneous Application No. 35-K/2003 filed by the respondent Pooja Devi against the petitioner whereby, the learned Court below has ordered the petitioner to pay to the respondent Rs. 70,000/- towards the marriage expenses of the respondent. The brief facts leading to the filing of this petition may be noticed as under.

2. Respondent Pooja Devi admittedly is the daughter of the petitioner. She was born on 31st August, 1983 from out of the wed-lock of the petitioner and his then wife Smt. Sita Rani. Due to estranged relations the matrimonial alliance between the petitioner and Smt. Sita Rani broke by the force of a decree of dissolution of marriage passed on 4th December, 1999. The appeal against this decree filed by Smt. Sita Rani is stated to be pending in this Court. In the meanwhile respondent Pooja Devi, claiming that her marriage had been fixed on 26th May, 2003 with one Mohinder Singh Katoch son of Shri Krishan Chand, filed an application under Section 20 of the [Hindu Adoptions and Maintenance Act, 1956](#) (1956 Act : for short) complaining in this application that the petitioner did not make any arrangement for the marriage of the respondent and that as per social custom prevalent in the area and also as per the status of the petitioner at least an amount of Rs. one lac is required to be spent for the marriage and since neither the respondent nor her mother Smt. Sita Rani possessed this amount, the respondent represented to the learned Court below in the aforesaid application filed under Section 20 (supra) that an appropriate order be passed directing him to pay the aforesaid amount to the respondent. It is under these circumstances, as noticed at the outset, that the learned Court below passed the impugned order directing the petitioner to pay Rs. 70,000/- as marriage expenses to the respondent. It is worthwhile to note here that the marriage of the respondent actually had stood solemnized on 26th May, 2003, that is, during the pendency of the Section 20 application and well before the passing of the impugned order.

3. Mr. K.D. Sood, learned Counsel appearing for the petitioner has assailed the impugned order on various grounds but the only ground upon which I propose to

set aside the impugned order relates to the total and absolute non-maintainability of the petition under Section 20 of 1956 Act and the total lack of inherent jurisdiction in the learned Court below in entertaining the petition and in passing the impugned order.

4. The [Hindu Adoptions and Maintenance Act, 1956](#) was enacted by the Parliament in the year 1956 to provide for the twin objects of adoption as well as maintenance. Chapter II of the 1956 Act deals with the subject of adoption with which we are not concerned in this case. Chapter III deals with the subject of maintenance. The scheme of this Chapter, starting from Section 18 onwards relates to the right of maintenance of a wife of a Hindu husband, maintenance of a widowed daughter-in-law, and maintenance of children as well as aged/infirm parents, amongst others. Section 20 relates to the obligation of a Hindu to maintain during his life-time his legitimate or illegitimate children, apart from his aged or infirm parents. For ready reference, Section 20 reads thus:

20. Maintenance of children and aged parents.-(1) Subject to the provisions of this Section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or 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 childless step-mother.

5. Whether it is the maintenance of a wife, or the maintenance of a widowed daughter-in-law or the children or parents, Sections 18, 19 and 20 of 1956 Act create a right in these persons mentioned in these Sections, namely, wife being maintained by her husband (Section 18), widowed daughter-in-law being maintained by her father-in-law (Section 19) and children being maintained by their

father (Section 20) and the corresponding obligation of such Hindus to maintain the aforesaid persons. Even though, undoubtedly, these provisions create a right and a corresponding obligation, neither these provisions occurring in Chapter III of 1956 Act nor the Act itself anywhere else provides for any mechanism nor creates any Machinery or Forum for enforcing the said right or the said obligation. No where does 1956 Act suggest or lay down as to how and in what manner, for instance a child of a Hindu would claim the right to maintenance by his father. (It is not disputed that the right to maintenance, as per Section 3(b) of 1956 Act includes, in the case of an unmarried daughter the right to receive reasonable expenses for her marriage.) The 1956 Act therefore, does not provide at all that, for instance a daughter claiming maintenance under Section 20 can file an application under this Section for her maintenance because under 1956 Act no Forum has been prescribed as to where would such an application lie nor does the Act at all say that in fact any such application can at all be filed.

6. Section 23 of 1956 Act gives to the 'Court' discretion to determine whether any and if so, what maintenance is to be awarded under the provisions of the Act and it provides that the 'Court' shall have due regard to the considerations set out in Sub-sections (2) or (3) of Section 23. Section 25 of 1956 Act lays down that the amount of maintenance, whether fixed by a 'decree' of a 'Court' or by agreement may be altered subsequently if there is a material change in the circumstances justifying such alteration. What therefore, clearly emerges from a reading of these two Sections is that the Legislature had in mind that the maintenance amount shall be determined and decided upon by a Court and that in doing so, in the ultimate analysis the Court would pass a decree. Now, neither the expression 'Court' nor the 'decree' has been defined in the 1956 Act. In the absence of the definition of the expression 'Court' or the expression 'decree' and in the absence of any mechanism having been provided in the Act, or the creation of any Forum or Machinery for enforcing the rights and obligations created by the 1956 Act, inevitably the only conclusion one can draw is that the Legislature intended that the right created and the corresponding obligation flowing under the 1956 Act can be enforced only through the mechanism of a normal Civil suit filed in a Civil Court of competent jurisdiction. It can therefore, safely be said that filing of a Civil Suit in a Civil Court of competent jurisdiction is the only remedy available to a person

seeking the enforcement of a right under Section 20 or under any other similar provision of the 1956 Act.

7. In a Full Bench judgment of Orissa High Court in the case of Khadal Penthi v. Hulash Dei and Anr. reported in : AIR1989 Ori137 , indirectly dealing with this issue their Lordships of Orissa High Court observed as under:

Evidently this is not a suit under any of the provisions of the [Hindu Marriage Act, 1955](#). This being a suit of civil nature, the Civil Court has jurisdiction to entertain and try the suit under Section 9 of the Civil Procedure Code. The prayer for interim maintenance cannot be one under Section 24 of the Hindu Marriage Act which provides for grant of pendente lite maintenance and expenses of the proceeding. No suit is contemplated under Section 18 of the Hindu Adoptions and Maintenance Act as the said Section merely declares that a Hindu wife whether married before or after the commencement of the said Act shall be entitled to be maintained by her husband during her lifetime. In other words, the, said Section merely recognizes the right of a Hindu wife to be maintained by her husband, which right was also recognized even under the texts of Hindu Law before enactment of the aforesaid Act. Her right to be maintained as declared and recognized by Section 18 of the said Act is an enforceable right which can be enforced in a suit in the Civil Court. In a decision reported in : [1977]106ITR653(SC) , Jaipur Mineral Development Syndicate, Jaipur v. Commissioner of Income Tax, New Delhi, their Lordships have indicated that every Court is constituted for the purpose of doing justice according to law and must be deemed to possess as a necessary corollary and as inherent in its very constitution all or such powers as may be necessary to do the right and to undo a wrong in the course of administration of justice. The limitation for exercise of inherent powers as has been pointed out in various decisions is that where there are express provisions in law dealing with a particular topic and they expressly or impliedly exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent power cannot be invoked in order to cut across such powers. There is no express provision in any law or in the C.P.C. for grant of interim maintenance in a suit for maintenance. In such cases the Court would have inherent powers to pass such order as may be necessary to meet the ends of justice.

8. In an earlier judgment a learned Single Judge of Punjab and Haryana High Court in *Shri Krishan Lal v. Smt. Sudershan Kumari and Ors.* reported in 1978 FLR 147, held as under:

From the aforesaid observations, it is abundantly clear that even the learned Additional District Judge accepted that under the Act no forum had been provided for filing an application for grant of maintenance. However, the jurisdiction was assumed by the learned Additional District Judge on the ground that as all matters pertaining to dissolution of marriage and restitution of conjugal rights were exclusively triable by the District Judge, then on the same analogy a petition under Sections 18 and 20 of the Act could also be entertained and disposed of by him. In my view,, this approach of the learned Additional District Judge is illegal and untenable. The Hindu Marriage Act has nothing to do with the provisions of the Act. Under the Hindu Marriage Act the Legislature has provided a forum for filing petitions under that Act I fail to understand as to how the provision under that Act providing a forum for the filing of the petition could by analogy give jurisdiction to the Additional District Judge to entertain an application for the grant of maintenance allowance under Sections 18 and 20 of the Act, when the Legislature in its wisdom did not provide for such a forum. Sections 18 and 20 of the Act give a right to the persona mentioned in those Sections to claim maintenance. Mr, Mittal was justified in contending that as no forum had been provided under the Act, the only remedy available to the respondents was to have had recourse to the Civil Court for the relief prayed for by them in the petition. Feeling the force of the contention of Mr. Mittal, Mr. H.L. Sarin, Senior Advocate, learned Counsel for the respondents, pressed into service the provisions of Section 21 of the Code of Civil Procedure and submitted that no objection having been taken about the jurisdiction of the Court, the same could not be permitted to be taken at this stage. This contention of his, on the face of it, appears to be of despair. A specific objection with regard to jurisdiction has been taken by the petitioner and an issue in that respect has been framed. As a result of my aforesaid discussion, I hold that the learned Additional District Judge had no jurisdiction to grant maintenance to respondents 2 and 3 on the petition that was filed under Sections 18 and 20 of the Act.

9. Based upon the aforesaid observations, there cannot be any manner of doubt that since the 1956 Act did not provide for any mechanism nor it created any Forum for enforcement of the right created under Section 20, no application under this Section was maintainable and hence, the learned Court below committed a patent error of law in erroneously assuming jurisdiction by entertaining such an application and in passing an order thereupon directing the petitioner to pay Rs. 70,000/- to the respondent. The remedy of the respondent, if at all, lay in filing a suit for this purpose before a Civil Court of competent jurisdiction.

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