

Ghanshyam Vs. Chinta Devi and ors.

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Court : Himachal Pradesh

Decided On : Jun-29-2009

Judge : Surjit Singh, J.

Appellant : Ghanshyam

Respondent : Chinta Devi and ors.

Judgement :

Surjit Singh, J.

1. Present revision petition is directed against the order dated 8.11.2006 of learned Additional Sessions Judge, whereby partly allowing the revision, filed by Chinta Devi and her minor children against the order dated 2.4.2005 of learned Additional Chief Judicial Magistrate, minor children, i.e. respondents Pooja Devi and Shivani, have been granted monthly maintenance allowance @ Rs. 600/-.

2. Facts, relevant for the disposal of the petition, may be stated thus. Respondents Chinta Devi and her minor children Pooja Devi and Shivani, filed a petition, under Section 125 Cr. P.C., seeking award of monthly maintenance allowance, against petitioner Ghanshyam, alleging that Chinta Devi was his legally wedded wife and Pooja Devi and Shivani were born out of their wedlock.

3. Petitioner took the plea that Chinta Devi was the wife of one Mohan Lal and respondents Pooja Devi and Shivani were born during subsistence of marriage of

Chinta Devi with Mohan Lal. Learned trial Magistrate accepted the plea of the petitioner and dismissed the petition.

4. Chinta Devi filed a revision petition before learned Additional Sessions Judge, who upheld the finding of the learned Judicial Magistrate that Chinta Devi was the legally wedded wife of Mohan Lal and dismissed Chinta Devi's claim for monthly maintenance allowance. At the same time he granted monthly maintenance allowance to Pooja Devi and Shivani, holding that illegitimate children are also entitled to maintenance in the same manner as the legitimate ones. It is against this order of the learned Additional Sessions Judge that the present revision petition is directed.

5. One of the learned Judges of this Court heard the arguments and reserved judgment. Later on, the case was released as the learned Judge felt that the present revision petition was not maintainable. He listed the matter to enable the revision petitioner to convince the Court how revision petition was maintainable.

6. Learned Counsel for the petitioner has submitted that query put by the learned Judge was that when Chinta Devi had availed remedy of revision, by filing a petition before learned Additional Sessions Judge, how the second revision in this Court was competent.

7. Sub-section (3) of Section 397 Cr. P.C. bars a second revision petition by the same person, who files the first revision. It does not bar filing of a revision petition by a person, who was not a petitioner in the first revision petition. A party, who had not filed the first revision petition, can file a revision petition in High Court, challenging the order, passed in revision, by the Sessions Court. This is clear from a bare reading of subsection (3) of Section 397 Cr. P.C.

8. As regards merits of the case, finding of the trial Magistrate that respondent Chinta Devi is the legally wedded wife of Mohan Lal and that the two minor children were born during subsistence of their marriage, has been upheld by the Sessions Judge. Now if it is so, the minor children, namely respondents Pooja Devi and Shivani are the legitimate children of Mohan Lal, by virtue of Section 112 of the Evidence Act, which says that if any person is born during continuance of a

valid marriage between his mother and any man, it shall be a conclusive proof that he is the legitimate son of the man to whom his mother is married, unless it can be shown that the parties to the marriage had no access to each other at any time, when he could have been begotten.

9. No evidence has been led to the effect that Chinta Devi and Mohan Lal did not have access to each other at any time when the minor respondents could have been begotten.

10. In view of the above stated position, revision petition is allowed. Impugned order of learned Additional Sessions Judge is set aside and that of learned Judicial Magistrate, dismissing the petition, under Section 125 Cr. P.C, in its entirety, is upheld and restored.

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