



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 3RD DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100646 OF 2018

BETWEEN:

SMT. GIRIJAMMA W/O. NAGARAJ BADIGER,
AGE: 50 YEARS, OCC. HOUSEHOLD WORK,
R/O. GANGUR, TQ. HUNGUND,
DIST. BAGALKOTE.

...APPELLANT

(BY SRI. ANAND R. KOLLI, ADVOCATE)

AND:

SRI. NAGARAJ S/O. MALLAPPA BADIGER,
AGE: 63 YEARS, OCC. PENSIONER,
R/O. DESHPANDE NAGAR, HUBBALLI,
NOW RESIDING AT: NEAR ARALIKATTI,
GULEDAGUDD, TAL. BADAMI,
DIST. BAGALKOTE.

...RESPONDENT

(BY SRI. GIRISH A. YADAWAD, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 09.02.2018 PASSED BY THE COURT OF THE II ADDITIONAL DISTRICT AND SESSION JUDGE, BAGALKOTE IN RA NO.110/2012, ALLOWING THE APPEAL AND THEREBY MODIFYING THE JUDGMENT AND DECREE DATED 30.10.2012 PASSED BY THE LEARNED SENIOR CIVIL JUDGE, HUNGUND IN O.S.NO.03/2007, BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel appearing for the appellant and the respondent.

2. This appeal is filed by the wife, who is the plaintiff in O.S.No.3/2007 before the Senior Civil Judge and JMFC, Hungund, assailing the order of the II-Additional District and Sessions Judge, Bagalkote in R.A.No.110/2012, whereby the First Appellate Court has reduced the monthly maintenance payable to the appellant herein from ₹5,000/- to ₹3,000/-.

3. The factual matrix i.e., relevant for the purpose of this appeal is that the defendant is the husband of the plaintiff-Smt.Girijamma. The defendant decided to marry second wife and therefore, the plaintiff filed a suit against the defendant and obtained a restraining order, but thereafter the defendant filed divorce petition in M.C.No.8/1985, which was dismissed. The relationship between the plaintiff and the defendant having been strained, she filed suit for maintenance in O.S.No.3/2007. The



said suit was resisted by the defendant and the Trial Court framed the following issues:

"ISSUES

1. *Whether plaintiff proves that, the defendant being husband, deserted from his house without any fault on her part?*
2. *Whether plaintiff proves that, she is unable to maintain herself?*
3. *Whether plaintiff proves that, defendant have not sufficient source of income as neglected to provide maintenance to her? (Recasted on 20.9.2012)*
4. *Whether plaintiff proves that she is entitled for monthly maintenance of Rs.10,000/- from defendant?*
5. *Is suit hit by principles of resjudicate in view of decree passed in O.S.no.95/2001 on the file of learned Civil Judge (Jr.Dn), Hungund?*
6. *Is plaintiff entitled for maintenance from defendant as sought for?*
7. *To what order or decree?"*

4. After the trial, the Trial Court came to the conclusion that the defendant is liable to pay a monthly maintenance of



₹5,000/- to the plaintiff. In coming to such conclusion, it considered the evidence available on record in respect of movable and immovable properties of the defendant and also his earnings. At the time of the Trial, the defendant was employed in Telecom. The Trial Court also considered the maintenance amount awarded in other matters. After considering the entire evidence available on record, it awarded a sum of ₹5,000/-. Paragraph 25 and 26 of the judgment of the Trial Court reads as below:

"25. It is specific allegation of plaintiff that, defendant has got 2nd marriage and through his 2nd marriage he has got four children. But defendant denied above say of plaintiff but he contended that, he has got four children through one Suvarna. It is also undisputed fact that, defendant was performed marriage of his daughters who are born to Suvarna and one daughter is presently working as engineer. But in the cross-examination he admits that he has shown the name of Suvarna as his wife in his service records. Considering admission of plaintiff and defendant and also evidence of defendant it can be said that, defendant has got four children through one Suvarna whose name is showing in service records as his wife out of two daughters, he was performed marriage of



two daughters. Still he has got responsibility of two daughters. It is also an admitted fact that, this court has awarded maintenance of Rs.1,500/- in the year 2001. Now a days the prices of essential commodities are raising and cost of living also become very high. Considering above said facts and evidence it can be said that, at present to lead minimum comfortable life an amount of Rs.1,500/- is not sufficient as contended by plaintiff. Due to rise of prices of essential commodities and also cost of living, it is necessary to enhance maintenance amount awarded in O.S.no.95/2001 as prayed in the plaint.

26. But as I have already discussed above neither plaintiff nor defendant placed any reliable evidence before the court what is the source of income. But on the basis of available evidence it can be said that, plaintiff has got some 400 source of income to lead her life. Like so defendant has got monthly pension of Rs.15,000/- or more and he is having responsibility of two daughters. So, considering rising of prices of essential commodities and also rise of present cost of living I am of the opinion that, if an amount of Rs.5,000/- is awarded, no injustice would be caused to the both side and it will meet the ends of justice. Accordingly, I answered issue no.2 in the



affirmative, issue no.3 in affirmative, issue no.4 partly in the affirmative and issue no.5 in the negative.”

5. Against the said judgment, the defendant went in appeal in R.A.No.110/2012. After hearing both the sides, by impugned judgment, the monthly maintenance of ₹5,000/- was reduced to ₹3,000/- by the First Appellate Court. In paragraph 28, the First Appellate Court gives its reasons as below:

“28. Point No.2: Though there is nothing like infirmity in the impugned judgment and decree passed by the trial court for the reasons stated and discussed supra, yet, looking to the fact that plaintiff possesses some land as per Ex. D3 whether it is joint or absolute, there appears to be some source of living for her and also when the pension amount that defendant derives is very meager say Rs.8,000/- per month which appears to be the only source of living for him out of which he has to eke out his living and expenses and keeping in mind the ratio relied upon by the learned counsel for defendant and with due regard to the parameters set out in S.23 of Hindu Adoption and Maintenance Act, I am of the considered opinion that granting monthly maintenance of Rs.5,000/- to the plaintiff out of pension amount of Rs.8,000/- that defendant gets will cause undue hardship



to the defendant and only Rs.3,000/- will be left to him towards his livelihood which I think will be too less for him. Therefore I think that awarding monthly maintenance of Rs.3,000/- to the plaintiff instead of Rs.5,000/- awarded by the trial court will meet the ends of justice"

6. It is evident that the First Appellate Court while reducing the maintenance amount has considered the fact that the defendant has retired from service and therefore, he has no such income as he had earlier. It also noticed that the plaintiff is also having some means of eking out her livelihood. It observes that the defendant, after his retirement, is unable to eke out his livelihood as earlier and therefore, it has reduced the maintenance amount.

7. There being a factual finding by the First Appellate Court regarding the capacity of the defendant to pay the maintenance amount, the same cannot be interfered with in this second appeal. No substantial question of law arises in this appeal and therefore, the same is dismissed.



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8. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of.

**SD/-
(C M JOSHI)
JUDGE**

YAN
CT:PA
LIST NO.: 1 SL NO.: 11