

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 32 OF 2002

- 1] Sau. Parighabai w/o Raghunath Jadhav,
age 35 years, occ. Household,
r/o Dhangarwadi, Tq. Kannad,
Dist. Aurangabad,
 - 2] Savita d/o Raghunath Jadhav,
age 15 years, occ. Education,
minor, u/g of petitioner no.1,
 - 3] Ramdas s/o Raghunath Jadhav,
age 6 yrs., occ. Education,
minor, u/g of petitioner no.1
- ...Applicants

VERSUS

Raghunath s/o Tatyaba Jadhav,
age 40 yrs., occ. Agril. And milk
business,
R/o Alapurwadi, Tq. Vaijapur Shivar,
Tq. Vaijapur, Dist. Aurangabad

...Respondent

.....

Shri V.S.Bedre, advocate for applicants
Shri Gulam Mujtaba, advocate for sole respondent

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CORAM : V.M.DESHPANDE, J.

DATED : 13th January, 2015

ORAL JUDGMENT : -

- 1] By the present Revision, the applicants are

questioning the correctness of the order, passed by the learned Judge, Family Court, Aurangabad, dated 28.12.2001, by which the learned Judge allowed the Petition No. 869 of 2001 filed by the present respondent and thereby cancelled the maintenance granted to the present applicant no.1 in Petition No. E-266 of 1997 on 6.8.1998.

2] I have heard Shri V.S.Bedre, learned counsel for the applicants and Shri Mujtaba, learned counsel for respondent in extenso.

3] The facts giving rise to the present Revision can succinctly be described herein below.

The applicant no.1 Prayagbai claims that she is wife of respondent Raghunath. Undisputedly, they were blessed with applicant no.2 and applicant no.3.

4] In the year 1997, an application was moved by applicant no.1 for grant of maintenance under Section 125 of the Code of Criminal Procedure before the Family Court, Aurangabad. The said application was registered as Petition No. E-266 of 1997.

Said Petition was allowed by the learned Judge of the Family Court on 6.8.1998, thereby directing the respondent to pay Rs.300/- per month by way of maintenance to applicant

no.1 Prayagbai.

5] In the year 1999, another Petition under Section 125 of the Criminal Procedure Code was moved by applicant no.2 and applicant no.3, the children, before the Family Court. The said petition was registered as Petition E-335 of 1999 and on 5.10.1999 the learned Judge allowed the said petition and granted monthly maintenance of Rs.150/- in favour of applicant no.2 and Rs.100/- in favour of applicant no.3.

6] By passage of time, the applicant no.1 thought it fit to move an application for variation of the maintenance amount in order to meet her day to day needs, and therefore, she filed a joint petition for herself and also for children Savita and Ramdas under Section 127 of the Code of Criminal Procedure before the Family Court which was registered as Petition E-476 of 2001. The application was opposed by the respondent/husband.

7] Not only the application for revision of maintenance was opposed by the husband, but respondent/husband independently filed an application for cancellation of the maintenance granted in favour of applicant no.1 Prayagbai way back in the year 1998. The said application was registered as Petition No. ER-869 of 2001.

8] It was contended on behalf of the husband before the Family Court that subsequent to the order passed by the Family Court granting maintenance in favour of Prayagbai, applicant nos. 2 and 3 filed Civil Suit for partition against the respondent, their father in the court of Civil Judge, Senior Division, Vaijapur. It was registered as Regular Civil Suit No. 267 of 1997. One of the issue in the said suit was regarding marital status of applicant no.1. The said suit was dismissed by the competent civil court. However, in the said suit, a finding was recorded that applicant no.1 Prayagbai is not legally married wife of the respondent.

9] The learned Judge of the Family Court decided both the applications filed on behalf of the applicant no.1 as well as the respondent under Section 127 of the Code of Criminal Procedure and by common order, dated 28.12.2001 rejected the claim of the applicant no.1 for enhancement in Petition No. E-476 of 2001, however, the learned Judge enhanced the maintenance for applicant nos. 2 and 3, directing the respondent to pay monthly maintenance of Rs.350/- to applicant no.2 Savita and Rs.300/- to applicant no.3 Ramdas from the date of the order. However, at the same time, the learned Judge allowed the petition filed on behalf of husband bearing No. 869 of 2001 and thereby cancelled the maintenance granted in favour of applicant no.1 Prayagbai on

6.8.1998.

10] It is to be noted that respondent/husband has not questioned the enhancement of the maintenance granted in favour of applicant nos. 2 and 3.

11] With his usual submissive approach, the learned counsel Shri Bedre submitted that in any case the maintenance granted in favour of applicant no.1 ought not to have cancelled by the learned Judge of the Family Court merely because she is the second wife of the respondent. In order to buttress his point, he has relied upon two reported decisions.

(1)1988 (1) Bom.C.R. 178

[Radhabai w/o Govinda Bhise vs Govinda s/o Totiji Bhise and anr.]

(2) (2014) 1 SCC 188

[Badshah vs Urmila Badshah Godse and anr.]

and submitted that the order passed by the Family Court needs to be set aside.

12] After having heard both the counsel, it is clear that a specific issue was framed in Regular Civil Suit No. 267 of 1997 in respect of the marital status of Prayagbai and the learned Civil Judge, Senior Division, Vaijapur passed a decree and dismissed the suit. What is important is the finding recorded in the said suit in respect of marital status of Prayagbai. The

learned Civil Judge specifically recorded that Prayagbai is not a legally wife of the respondent. Further, Shri Bedre has fairly stated that the appeal carried against the said decree is dismissed by the appellate court, confirming the said decree and as such it has attained the finality.

13] In view of recording a specific finding that applicant no.1 is not legally wedded wife and is second wife of the respondent, in view of the provisions of Section 125 of the Criminal Procedure Code, applicant no.1 Prayagbai is disentitled to claim the maintenance.

14] In so far as reported decisions are concerned, those are not helpful to the learned counsel for the applicants, because the facts of those cases are altogether different.

In so far as the authoritative pronouncement of the Apex Court is concerned, in the said case the Apex Court has specifically observed that the wife in the said case was married with the husband and at that time the factum of his first marriage was concealed from the wife, and therefore, she married with the husband. In that context, the Apex Court has observed that merely because she is second wife, that itself will not disentitle her to claim maintenance, especially when the husband contracted marriage with her by concealing the fact of his first marriage.

From the pleadings, evidence and also from hearing, it is clear in the case at hand that it is not the claim of Prayagbai that she was required to marry with Raghunath since the fact of his first marriage was concealed by Raghunath. Hence, said ratio is not applicable in the present case.

In so far as the reported decision of this court is concerned, the facts of the said case clearly show that the first wife Gangubai in the said case was minor and at the time of marriage she did not attain puberty. In spite of that, husband Govinda married with her and subsequently before she attained puberty, he married with petitioner Radhabai in the said case. Therefore, on the facts, it is clear that when Govinda married with Gangubai at that time Gangubai was minor and did not attain puberty. Therefore, the said marriage was void marriage and though during the subsistence of the said marriage, if the husband married with Radhabai, Radhabai will be legally married wife is the dictum given by the learned Single Judge of this court in the year 1988.

Therefore, the said case is also not applicable in the present case.

15] The learned Judge of the Family Court has bestowed the thoughtful consideration to every aspect of the case and has correctly reached to the conclusion that in view of the fact that Prayagbai is the second wife and she was legally married

with Raghunath she is disentitled to claim maintenance. Since the said aspect was decided after grant of maintenance in the year 1998, he was entitled to demonstrate either to vary, cancel or enhance the maintenance. This aspect is also considered by the learned Judge of the Family Court.

16] The upshot of the afore said discussion leads me to pass the following order :-

The Revision must fail and it is accordingly dismissed, however, with no order as to costs. Rule discharged.

[V.M.DESHPANDE, J.]

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