

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

CRIMINAL REVISION APPLICATION NO. 15 OF 2003

- 1] Sau. Mandabai w/o Vasant Pawar,
age 26 years, occ. Household,
r/o Sidhpur, Tq. Gangapur,
Dist. Aurangabad,
- 2] Ku. Sonu d/o Vasant Pawar,
age 5 years, Minor under
guardianship of her real mother
Petitioner no.1 Smt. Mandabai
- ...Applicants
[Orig.Petitioners]

VERSUS

- 1] Vasant s/o Yawhan Pawar,
age 30 years, occ. Agril.,
r/o Savkheda, Tq. Gangapur,
Dist. Aurangabad,
- 2] The State of Maharashtra
- ...Respondents

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Shri S.A.Ambad, A.P.P. for respondent no.2/State
.....

WITH

CRIMINAL REVISION APPLICATION NO. 77 OF 2003

- 1] Vasant s/o Yawhan Pawar,
age 30 years, occ. Agril.,
r/o Savkheda, Tq. Gangapur,
Dist. Aurangabad
- ...Applicant

VERSUS

- 2] Kumari Sonu d/o Vasant Pawar,
age 5 years, Minor under
guardianship of her real mother
Sau. Mandabai w/o Vasant Pawar,
age 26 years, occ. Household,
R/o Sidhpur, Tq. Gangapur,
Dist. Aurangabad ...Respondent

.....

CORAM : V.M.DESHPANDE, J.

DATED : 18th February, 2015

ORAL JUDGMENT : -

1] Both these revisions can conveniently be disposed of by this common judgment, since both arise out of the order dated 18.11.2002, passed in Petition No. E-269 of 2002, by the Judge, Family Court, Aurangabad.

Criminal Revision Application No. 15 of 2003 is filed by applicant no.1 in Petition No. E-269 of 2002, whereas Criminal Revision Application No. 77 of 2003 is filed by non-applicant in Petition No. E-269 of 2002.

2] None for the applicants and none for the non-applicants in both the Revisions.

Record and proceedings was called by this court when these matters were admitted in the year 2003. Thus, I have the advantage of going through the record and

proceedings.

3] Petition E-269 of 2002 was filed by Mandabai and Sonu against Vasant Pawar the applicant in Criminal Revision Application No. 77 of 2003. The proceedings were filed for grant of maintenance under Section 125 of the Code of Criminal Procedure. According to the said petition, initially also in the year 2002 proceedings under Section 125 of the Code of Criminal Procedure were filed by them against Vasant which was registered as Petition E-348 of 2001. However, upon advise from their counsel, the said proceedings were withdrawn.

4] According to the petition, the marriage between Mandabai and Vasant was performed on 25.3.1996 as per Christian rites and custom. From the wedlock, Sonu was born. Vasant, the husband, started giving illtreatment to wife Mandabai and she was driven away from the matrimonial house.

5] The application was contested and claim of maintenance was denied by husband Vasant on the ground that Mandabai is not his legally wedded wife.

6] In order to substantiate the pleadings, Mandabai entered into witness box. Vasant also entered into witness box. He examined one Ratnakar Gaikwad as his witness; whereas Mandabai examined one Vishwanath Waidande as her witness.

7] The learned Judge, Family Court, Aurangabad vide order, dated 18.11.2002 partly allowed the application under Section 125 of the Code of Criminal Procedure. The learned Judge dismissed the claim of the wife, however, granted maintenance in favour of daughter Sonu at the rate of Rs.200/- per month from the date of the petition.

8] Feeling aggrieved thereby, both Vasant and Mandabai are before this court in Criminal Revision Application Nos. 15 and 77 of 2003.

9] The evidence of Mandabai would reveal that her marriage took place with Vasant on 25.3.1996 as per Christian rites and custom. In cross-examination, she has admitted as under :-

“ My marriage was registered as per our custom. I have not filed any document in court about my marriage. I cannot assign any reason why I have not filed document about my marriage.”

She has further admitted the following important facts, which has a direct bearing in respect of her claim for maintenance.

“ It is true his marriage was performed previously with one Jeejabai. It is true their marriage was performed as per Christian rites. I do not know whether there was divorce between Vasant and Jeejabai.”

In view of the above evidence on record, it is clear that previously Vasant was married with Jeejabai and it appears that the marriage with Mandabai was performed when his earlier marriage was subsisting. There is nothing on record to show that Vasant has misled Mandabai and/or concealed the fact about his first marriage with Jeejabai. Hence, it is absolutely clear that Mandabai is second wife of Vasant whose marriage was performed during the subsistence of his first marriage. In that view of the matter, the learned Judge of the Family Court was right, in my opinion, in dismissing the claim of wife Mandabai to claim maintenance.

10] In so far as the maintenance of daughter Sonu is concerned, the learned trial court has correctly reached to the conclusion that it is different thing that the marriage between Mandabai and Vasant is not legally proved, however, that does not absolve the obligation and liability of Vasant to maintain his daughter. It is clear that he has not taken any defence nor has

brought anything on record to dispute the paternity of Sonu. Hence, learned Judge of the Family Court was right in granting maintenance.

11] Upshot of the afore said discussion leads me to pass the following order.

ORDER

(i) Criminal Revision Application Nos. 15 of 2003 and 77 of 2003 are dismissed.

(ii) The judgment and order, passed by the Judge, Family Court, Aurangabad in Petition E-269 of 2002 is confirmed.

(iii) Rule in both the Revision Applications is made absolute.

[V.M.DESHPANDE, J.]

dbm/crra15.03