

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.348 of 2012

1. Sau. Shaila Balasaheb Kadam,
Age 44 years,
Occupation – Household,
Hindu Inhabitant,
Residing at Kajarwadi (Khale),
Taluka – Patan, District Satara.

...Appellant/
Original Plaintiff

Versus

1. Shri Balasaheb Hindurao Kadam,
Age 47 years,
Occupation – Agriculture,
R/o Vatalwadi (Navadi),
Taluka – Patan, District Satara.
2. Shri Hindurao Shripati Kadam,
Age 71, Occupation – Agriculturist,
R/o Sonaichiwadi,
Taluka – Patan, District Satara.
3. Shri Sanjay Hindurao Kadam,
Age 41, Occupation – Agriculturist,
R/o Sonaichiwadi,
Taluka – Patan, District Satara.
4. Sou. Urmila Uttam Shinde,
Age 38, Occupation – Household,
R/o Koriwale, Taluka – Patan,
District Satara.
5. Sou. Nanda Pandurang Patil,
Age 41, Occupation – Household,
R/o Undale, Taluka – Karad,
District Satara.

6. Sou. Shalan Hindurao Kadam,
Age 63 years,
Occupation – Household,
R/o Sonaichiwadi, Taluka – Patan,
District Satara.

... Respondents/
Original Defendants

Shri Rajesh Kachare i/b Shri Ameet A. Palkar, Advocates for Appellant.
Shri R.S. Khadapkar, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.
Dated :25th June, 2015

Oral Judgment :

1. In Regular Civil Suit No.22 of 2004 filed by the appellant-wife under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 claiming maintenance at the rate of Rs.5,000/- per month, the Trial Court passed a decree on 27-7-2007 directing the respondent No.1-husband to pay the maintenance at the rate of Rs.450/- per month to the appellant-wife from the date of filing of the suit. It was further declared that the charge of maintenance amount be kept on the share of the respondent No.1-husband in the joint family property. The said suit was dismissed against the respondent Nos.2 to 6. Regular Civil Appeal No.79 of 2007 preferred by the respondent No.1-husband was allowed by the lower Appellate Court by its judgment and order dated 20-10-2011, setting aside the decree passed by the Trial Court. Hence, the original plaintiff is before

this Court in this second appeal.

2. Initially, this second appeal was disposed of by this Court, holding that no substantial question of law arises for consideration. The matter was then carried to the Apex Court. In Civil Appeal Nos.10086-10087 of 2014, the Apex Court set aside the decision of this Court and remanded the matter back to this Court for framing the substantial question of law and deciding the same accordingly. On remand of the matter, this Court passed an order on 10-6-2015 as under :

“ Heard the learned counsels appearing for the parties. I have also gone through the decision of the Apex Court remanding the matter back to this Court for framing the appropriate substantial question of law and deciding the matter on its own merits.

Admit, on the following substantial question of law :

Whether the appellant-wife was entitled to maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 being the second wife of the respondent No.1, particularly when the factum of subsistence of first marriage of the respondent No.1 was alleged to have been suppressed?

The learned counsel for the respondent No.1 waives service of notice.

Put up this matter for final disposal on 25-6-2015.”

The parties were put on notice that the matter may be finally disposed of by this Court in view of the decision of the Apex Court and accordingly it is fixed today.

3. The Trial Court held that the appellant-wife has established that the respondent No.1-husband has willfully refused and neglected her as a wife and that she is entitled to maintenance. Accordingly, an amount of maintenance was fixed at Rs.450/- per month. It was urged before the Trial Court that the appellant-wife being the second wife was not entitled to maintenance. The Trial Court relied upon the decision of the Apex Court in the case of *Ramesh Chandra Rampratapji Daga v. Rameshwari Ramesh Chandra Daga*, reported in 2005(2) SCC 33, for the proposition that a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent. The lower Appellate Court has distinguished the decision of the Apex Court on the ground that it arose out of the marriage petition filed under the Hindu Marriage Act, 1955. The analogy cannot, therefore, be extended to a petition under Section 18 of the

Hindu Adoptions and Maintenance Act, 1956.

4. There is no dispute that the marriage of the respondent No.1 with the appellant was performed on 6-7-1991 and at that time, the earlier marriage of the respondent No.1 with one Bharti was subsisting. It is also not in dispute that the appellant-wife was pregnant after the marriage and she left the matrimonial house after about a period of six months, but there is no issue out of the wedlock. The case of the appellant-wife before the Trial Court was that the respondent No.1-husband suppressed the factum of first marriage, which took place in the year 1984 with one Bharti, at the time of her marriage of the respondent No.1 on 6-7-1991. This was denied by the respondent No.1. The appellant-wife entered the witness-box and deposed about the suppression of first marriage by the respondent No.1-husband. She was also cross-examined by the respondent No.1-husband. The respondent No.1-husband also entered the witness-box and denied suppression of first marriage. He also examined two more witnesses, who were cross-examined by the appellant-wife. None of the Courts below have recorded any finding on the question of suppression of first marriage by the respondent No.1-husband at the time of the marriage with the appellant. The learned counsel for the

respondent No.1-husband has urged that both the Courts below have not framed any issue on the point of suppression of first marriage by the respondent No.1. He, therefore, prays that the matter be remanded back to the Trial Court on this aspect.

5. To deal with the argument on remand, it has to be admitted that both the Courts below have not determined the issue of suppression of the first marriage. Section 103 of the Code of Civil Procedure permits the High Court to determine such an issue if the evidence on record is sufficient for such determination. After going through the pleadings and evidence on record, I am satisfied that such question can be determined in this second appeal. Hence, I proceed to decide such question of fact.

6. In the background of undisputed factual position and the findings recorded by the Courts below, I have gone through the pleadings and the evidence brought on record. There is a specific assertion in the plaint about the factum of suppression of first marriage by the respondent No.1-husband, which has been denied. The respondent No.1-husband cross-examined the appellant-wife on this aspect and the suggestion given was that the factum of first

marriage was disclosed to the appellant-wife and her elder brother. It was also suggested that the enquiry was also made from one acquaintance Shri Atmaram More, resident of Marul. These suggestions are denied by the appellant-wife. The appellant-wife had initiated the proceedings against the respondent No.1-husband under Sections 494, 495, 498-A, 323 and 504 of the Indian Penal Code and the respondent No.1-husband was convicted, but in appeal he is acquitted. The appellant-wife has refused to cohabit with the respondent No.1-husband upon acquiring knowledge of first marriage and she has terminated the pregnancy. This would be the natural behaviour of the lady not having the knowledge of earlier marriage. In the examination-in-chief, the respondent No.1-husband deposed that the factum of his first marriage was brought to the notice of the appellant-wife and her parents prior to the second marriage. It is not the case of the respondent No.1-husband that the first wife was living the matrimonial house at the time of his second marriage with the appellant. None of the witnesses have deposed about the disclosure of this fact either to the appellant-wife or her parents. The appellant-wife has, therefore, established that there was a suppression of first marriage by the respondent No.1-husband at the time of the second marriage with her.

7. In the decision in the case of *Badshah v. Urmila Badshah Godse and another*, reported in (2014) 1 SCC 188, the Apex Court has relied upon its earlier decision in the case of *Rameshchandra Daga*, cited *supra*. It has been held that once the factum of suppression of first marriage is established, then the second wife cannot be denied the benefit of maintenance. Paras 15 and 16 of the decision of the Apex Court are relevant and the same are, therefore, reproduced below :

“15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.”

“16. The law regulates relationship between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory

interpretation, the course is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.”

In view of the aforesaid law laid down by the Apex Court, the view taken by the lower Appellate Court that the appellant-wife is not entitled to claim maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 cannot be sustained and the same will have to be set aside by restoring the decree passed by the Trial Court.

8. In the result, the second appeal is allowed. The judgment and order dated 20-10-2011 passed by the lower Appellate Court in Regular Civil Appeal No.79 of 2007, is hereby quashed and set aside, and the decree passed by the Trial Court on 27-7-2007 in Regular Civil Suit No.22 of 2004 is restored.

9. In view of the disposal of this second appeal, Civil Application No.666 of 2012 filed by the appellant-wife does not survive and the same stands disposed of as such.

10. At this stage, the learned counsel for the respondent No.1-

husband prays for stay of this judgment and order. In the facts and circumstances of the case, I do not find any reason to grant the prayer. The prayer is, therefore, rejected.

Judge.

Lanjewar