

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

F.C.A.No. 307 OF 2013

AND

F.C.A.No. 453 OF 2013

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COMMON JUDGMENT: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The unsuccessful 1st plaintiff in O.S.No. 1 of 2012 on the file of the Judge, Family Court, Ranga Reddy District (for short, 'the trial Court'), preferred F.C.A.No. 307 of 2013 challenging the decree and judgment of the trial Court dated 14-05-2013, whereunder the defendant was directed to pay maintenance at Rs.3,000/- p.m. to the second plaintiff from the date of filing the suit till the 2nd plaintiff attains majority while declining to grant maintenance to the 1st plaintiff and the defendant in O.S.No. 1 of 2012 preferred F.C.A.No. 453 of 2013 challenging the maintenance awarded in favour of the 2nd plaintiff, son of the 1st plaintiff and the defendant. Hence, we find that it is expedient to decide both the appeals by common judgment as they arose out of the decree and judgment in O.S.No. 1 of 2012.

2. For convenience of reference, the parties to the appeals are ranked as in O.S.No. 1 of 2012 before the trial Court throughout the judgment.

3. The plaintiffs filed the suit for grant of monthly maintenance in their favour @ Rs.5,000/- to each alleging that marriage of the 1st plaintiff with the defendant was performed on 05-12-1994 at Arya Samaj, Sultan Bazar, Hyderabad, as per Hindu rites and customs since their marriage is inter-caste. During wedlock, the 1st plaintiff and the defendant were blessed with the 2nd plaintiff.

As the 1st plaintiff belongs to a different caste, her in-laws did not

allow the 1st plaintiff for sometime and behaved in different manner and, slowly, the defendant developed aversion towards the 1st plaintiff. The defendant scorched the left wrist of the 1st plaintiff with iron box and totally changed his attitude towards the 1st plaintiff. The mother-in-law of the 1st plaintiff also expressed a view that she would provide a prostitute to her son and would not allow her son to lead marital life with the 1st plaintiff. On 04-01-2000 at about 2.30 *p.m.*, the defendant, along with his friends, armed with lotties and knives, raided on the 1st plaintiff's parents' house and abused them in filthy language. On the next day, parents of the 1st plaintiff reported the matter to Chilkalguda Police lodging a complaint and the police pacified the situation but there was no change in the attitude of the defendant. The defendant, with an evil intention, neglected and drove out the 1st plaintiff from the matrimonial house. Thereafter, the 1st plaintiff filed maintenance case before the Judge, Family Court, Secunderabad, and obtained an order awarding maintenance of Rs.400/- p.m. each to the plaintiffs. The defendant carried the matter in revision and obtained stay. The defendant is working in Bambino Industry and earning Rs.6,000/- p.m. on the date of filing maintenance case apart from getting Rs.15,000/- p.m. towards rent.

The defendant also filed original petition on the file of the Court of Additional Senior Civil Judge for dissolution of the marriage which was dismissed. Aggrieved by the order in the original petition, the defendant preferred civil miscellaneous appeal before this Court which is pending. Thus, the defendant neglected to provide maintenance to the 1st plaintiff. Hence, the suit for grant of maintenance.

4. The defendant filed written statement admitting the marital relationship while contending that the defendant never raided on the 1st plaintiff's parents' house along with his friends armed with deadly weapons and never abused or ill-treated the 1st plaintiff and her parents. The main contention of the

defendant is that on 11.12.1999, the 1st plaintiff left the company of the defendant but no complaint was made at Chilkalguda P.S. The 1st plaintiff filed M.C.No. 1 of 2000 and, in compliance of the direction, the defendant paying Rs.400/- to each of the plaintiffs in the maintenance case monthly. The defendant is not an employee as on the date of filing suit and lost his employment due to nuisance created by the 1st plaintiff and her family members and the said fact is also admitted by her in the maintenance case. The 1st plaintiff left the company of the defendant and approached Woman Counseling Center, Lakdikapool, on 13.09.1999. In spite of counseling, she did not mend her ways. The 1st plaintiff is practicing as an advocate, earning Rs.4,000/- p.m. and filed two other cases with an ulterior motive against the defendant. The 1st plaintiff is the only daughter to her parents, owned and possessed a house at Kindibasthi, Chilkalguda, and getting rent @ Rs.6,000/- p.m. The father of the 1st plaintiff also worked as R.T.C. employee and getting Rs.6,000/- p.m. as pension. Since the defendant is not an employee and without any source of income, he is paying Rs.400/- each to the 1st plaintiff and the 2nd plaintiff as per the orders in M.C.No. 1 of 2000. As such, the 1st plaintiff is not entitled to claim maintenance in the suit and prayed to dismiss the suit.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff has no capacity to maintain herself?

2. Whether the plaintiffs are entitled maintenance from the defendant?

3. To what relief?

6. During the course of trial, enquiry, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and got marked Exs.A1 to A5. On behalf of the defendant, the defendant himself was examined as D.W.1 and got marked

Exs.B1 to B10.

7. Upon hearing argument of both counsel and considering oral and documentary evidence, the trial Court passed decree granting maintenance to the 2nd plaintiff, son of the 1st plaintiff and the defendant, @ Rs.3,000/- p.m. while negating maintenance to the 1st plaintiff on the ground that she owned and possessed immovable property in addition to practicing as an advocate whereas the defendant is not an employee and, without any source of income, paying maintenance in M.C.No. 1 of 2000.

8. Aggrieved by the decree and judgment, the unsuccessful 1st plaintiff preferred F.C.A.No. 307 of 2013 on various grounds mainly contending that when the marital relationship between the 1st plaintiff and the defendant is admitted, the defendant is under obligation to maintain the 1st plaintiff, who is his legally-wedded wife, and the reason assigned by the trial Court that as the defendant is paying maintenance in the proceedings filed under Section 125 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), the 1st plaintiff is disentitled to claim maintenance is contrary to law laid down by Apex Court and the trial Court committed an error. It is further contended that house was gifted by Yadagiri under Ex.B5 and encumbrance certificate marked as Ex.B6 shows that the 1st plaintiff and her father are registered owners and mere getting meager amount as rent from the house is not a ground to decline maintenance to the 1st plaintiff but the trial Court declined to grant maintenance for the simple reason that the 1st plaintiff owned and possessed house and getting income from the tenant who is in occupation of the first floor is erroneous and, apart from that, the pension being received by her father is his independent income and the same cannot be taken into consideration to decline award of maintenance to the 1st plaintiff but the trial Court, on erroneous appreciation of facts and law, dismissed the suit and prayed to pass decree in favour of the 1st plaintiff allowing this appeal setting

aside the decree and judgment in O.S.No. 1 of 2012.

9. The defendant, being aggrieved by the decree and judgment in O.S.No. 1 of 2012, preferred F.C.A.No. 453 of 2013 challenging the maintenance awarded by the trial Court in favour of the 2nd plaintiff, son of the 1st plaintiff and the defendant, on various grounds mainly contending that the order of the trial Court is against the principles of equity and good conscience and awarding maintenance @ Rs.3,000/- p.m. is illegal and without considering the maintenance awarded in M.C.No. 1 of 2000 and that grant of maintenance @ Rs.3,000/- p.m. is erroneous and prayed to set aside the same.

10. During the course of argument, learned counsel for the 1st plaintiff, while reiterating the grounds urged in the grounds of appeal, would submit that a junior advocate practicing in Courts would not get hardly any amount even to meet daily expenses and the first floor of the property possessed by her is in the occupation of a tenant but on meager amount which is not at all sufficient to meet minimum expenses including electricity charges but the trial Court, taking into consideration of the house owned and possessed by her and rent derived from it and considering the amount of maintenance awarded under original of Ex.A1, erroneously declined to grant maintenance. Though the defendant is not an employee, it is his legal obligation to maintain his wife. While awarding maintenance, the Court has to take into consideration of financial status of the defendant also under the provisions of Hindu Adoptions and Maintenance Act, 1956 (for brevity, 'the Act of 1956'), and award reasonable amount as maintenance so as to enable the 1st plaintiff to maintain the same status which her husband, the defendant, is maintaining but the trial Court erroneously dismissed the suit.

11. Learned counsel for the defendant would submit that the decree passed by the trial Court denying maintenance to the 1st plaintiff is totally in consonance with law and based on facts and when the first plaintiff owned

and possessed house and getting income therefrom, she is disentitled to claim maintenance while contending that awarding maintenance @ Rs.3,000/- p.m. in favour of the 2nd plaintiff, when the defendant is without any means and also lost his employment in Bambino Industries, is illegal, erroneous and prayed to set aside the same.

12. Considering rival contentions, perusing oral and documentary evidence including the impugned decree and judgment and grounds of appeal, the sole point that arises for consideration is as follows:

"Whether the defendant neglected to maintain the plaintiffs having sufficient means to maintain them, if so, are they entitled to maintenance and at what rate?"

13. **In Re. Point:**

Undisputedly, the marriage of the 1st plaintiff with the defendant was performed as per Hindu rites at Arya Samaj as they belong to different castes. The 1st plaintiff belongs to Scheduled Caste whereas the defendant is Yadava by caste. The trial Court granted maintenance in favour of the 2nd plaintiff, son of the 1st plaintiff and the defendant, @ Rs.3,000/- which is challenged before this Court in F.C.A.No. 453 of 2013.

14. The main grievance of the 1st plaintiff is that as she belongs to scheduled caste, the defendant and his mother developed aversion towards the 1st plaintiff and subjected her to cruelty both physically and mentally and narrated the instance of subjecting her to physical cruelty *i.e.* scorching her left wrist with iron box. The 1st plaintiff is living separately, filed maintenance case under Section 125 of the Code of Criminal Procedure (for short, 'Cr.P.C.') in M.C.No. 1 of 2000 and obtained an order of maintenance for Rs.400/- p.m. to each of the plaintiffs. Having been aggrieved by the order in maintenance case under Section 125 of Cr.P.C., the defendant preferred revision in Crl.R.C.No. 1123 of 2000 before this Court and obtained stay. As the maintenance awarded by the Judicial Magistrate of I Class is insufficient

to meet the necessities of the plaintiffs, they filed the present suit claiming maintenance alleging that the defendant neglected to maintain them though he owned and possessed sufficient means to maintain them. However, the defendant denied his capacity to maintain the 1st plaintiff while contending that she owned and possessed sufficient means. Believing the same, the trial Court declined to grant maintenance to the 1st plaintiff while granting maintenance to the 2nd plaintiff. The said finding is now challenged in these appeals on various grounds referred *supra*.

15. Before advert to the evidence on record, it is appropriate to advert to the provisions of the Act of 1956 which enable the 1st plaintiff to claim maintenance. Section 18 of the Act of 1956 is the relevant provision which enables a Hindu wife, whose marriage was performed before or after the commencement of this Act, to claim maintenance from her husband during her lifetime subject to fulfilling the grounds enunciated in sub-section (2) of Section 18 which are as follows:

- (2) *A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance:*
 - (a) *If he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or of willfully neglecting her;*
 - (b) *if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;*
 - (c) *if he is suffering from a virulent form of leprosy;*
 - (d) *if he has any other wife living;*
 - (e) *if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;*
 - (f) *if he has ceased to be a Hindu by conversion to another religion;*
 - (g) *if there is any other cause justifying her living separately;*

However, sub-section (3) debars a Hindu wife to separate maintenance and residence from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion. In fact, it is not the case of the

defendant that the 1st plaintiff is leading unchaste life and ceases to be a Hindu by conversion to another religion. Hence, the defendant is not entitled to disown his liability to pay maintenance having admitting the marital relationship between the 1st plaintiff and him. In the present case, the defendant subjected the 1st plaintiff to cruelty and the specific instances of cruel treatment *i.e.* the 1st plaintiff received scorch injury on her left wrist as she belongs to scheduled caste which enables her to live separately in view of clause (b) of sub-section (2) of Section 18 of the Act of 1956 and when she is living separately, the defendant is under obligation to maintain the 1st plaintiff.

16. For grant of maintenance, the Court has to take into consideration of several aspects mentioned in Section 23 of the Act of 1956 which are as follows:

- 23 (1) *It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2), or sub-section (3) as the case may be, so far as they are applicable.*
- (2) *In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to:*
 - (a) *the position and status of the parties;*
 - (b) *the reasonable wants of the claimant;*
 - (c) *if the claimant is living separately, whether the claimant is justified in doing so;*
 - (d) *the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;*
 - (e) *the number of persons entitled to maintenance under this Act.*
- (3) *In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to:*
 - (a) *the net value of the estate of the deceased after providing for*

the payment of his debts;

- (b) the provision, if any, made under a will of the deceased in respect of the dependent;*
- (c) the degree of relationship between the two;*
- (d) the reasonable wants of the dependant;*
- (e) the past relations between the dependant and the deceased;*
- (f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;*
- (g) the number of dependants entitled to maintenance under this Act.*

17. In view of the relevant considerations for fixing maintenance amount, the plaintiffs have to prove status of the parties, reasonable wants of the claimants, justification for her separate living, income of both the spouses and number of persons entitled to claim maintenance. In the instant case on hand, the 1st plaintiff is, admittedly, a law graduate whereas the defendant was working in Bambino Industries earning Rs.6,000/- by the date of filing maintenance case and, having considered the income of the defendant, maintenance of Rs.400/- to each of the plaintiffs 1 and 2 is awarded by the judicial magistrate in the proceedings under Section 125 of Cr.P.C. which is supported by Ex.A1 certified copy of the order in maintenance case. The reason for negating maintenance in favour of the 1st plaintiff by the trial Court is that she owned and possessed a house, getting rent by letting out the first floor of the house and also getting maintenance of Rs.400/- p.m. as awarded in M.C.No. 1 of 2000. Even before this Court also, learned counsel for the defendant contended that when the first plaintiff is earning sufficiently and, if the considerations mentioned under Section 23 of the Act of 1956 are taken for deciding quantum of maintenance, the 1st plaintiff is disentitled to claim maintenance and supported the order. At this stage, we feel that it is appropriate to advert to the evidence on record in view of the admitted fact that the 1st plaintiff and the defendant are living separately and the trial Court

found that there is justification for separate living of the 1st plaintiff from the defendant and thereby applied Section 23 (2) (c) of the Act of 1956. In para No. 7 of the affidavit filed before this Court in F.C.A.No.453 of 2013, the defendant narrated the reasons which disentitled the 1st plaintiff to claim maintenance. The 1st reason is that the 1st plaintiff is carrying on money lending business and filed C.C.No. 451 of 2005 on the file of the Court of X Additional Chief Metropolitan Magistrate, Secunderabad, for the offence punishable under Section 138 of the Negotiable Instruments Act as cheque for Rs.30,000/- issued by one T.Srinivas was dishonoured; the second ground is that the 1st plaintiff is a practicing advocate enrolling herself as a member of the Bar Council *vide* Roll No. AP/552/2004 dated 29-04-2004 and earning sufficient income; the 3rd ground is that she owned and possessed immovable property comprising of G + two floors in prime locality and the last ground is that she is maintaining T.V.S. Scooty pep and possessed sufficient means but the affidavit is not a part of the trial Court record and it is only an assertion made by the defendant. The undisputed fact is that the 1st plaintiff is a practicing advocate enrolling herself in the year 2004 as a member of the Bar Council but no iota of evidence is produced to prove her income by the defendant. In the absence of any income, the Court cannot presume that the 1st plaintiff, being junior advocate, is sufficiently earning to maintain herself and to maintain her son *i.e.* the 2nd plaintiff. The burden of proof is on the 1st plaintiff to prove that she has no means and rebut the same by the defendant by producing evidence. In Ex.A1, certified copy of order in M.C.No. 1 of 2000, the Judge, Family Court, already concluded that the defendant neglected and failed to maintain the plaintiffs and further held that the defendant is under obligation to maintain his wife. The defendant resigned to his employment *vide* Ex.B5 resignation letter marked in maintenance case. From Ex.A1, it is evident that the defendant himself resigned to his job and he possessed sufficient properties but alienated the same executing Ex.A3

and, subsequently, obtained document in favour of his mother. If really, he did not possess any means to maintain the plaintiffs, he would not have resigned to his job as observed in M.C.No. 1 of 2000. It appears that the defendant resigned to his employment in Bambino Industries only to avoid payment of maintenance to the plaintiffs and he, admittedly, possessed motor vehicle and possessed sufficient immovable property evidenced by Ex.A3 sale agreement – cum – GPA executed by Sayampu Lakshmi, W/o Adisheshaiah, in favour of M.Vijay Kumar Yadav. In para No. 3 of 2nd page of Ex.A3, there is a specific reference that the vendor Sayampu Lakshmi purchased the property from K.Srinivasa Raju, M/s. Satya Builders, represented by its proprietrix G.Satyavathi, and the defendant under registered document No. 1256 of 2002 dated 08-03-2002. This fact is sufficient to conclude that the defendant is a builder carrying on business of construction and selling flats. Hence, the contention that the defendant did not possess any property is false *ex facie* and he possessed several properties carrying on real-estate business *vide* Ex.A3. Therefore, the contention that the defendant did not possess any amount to maintain himself and pay maintenance to the plaintiffs is false. The plaintiffs also produced registration certificate of vehicle to prove that the defendant maintaining motor vehicle with gears. If really the defendant is penniless, question of maintaining motor vehicle and carrying on real-estate business do not arise. Exs.A3 and A4 are suffice to conclude that the defendant possessed sufficient means to pay maintenance to the plaintiffs.

18. Coming to the evidence of P.W.1, she made categorical admission in her evidence that she possessed house consisting of G + 1st floor and she is residing in the ground floor while letting out the 1st floor on meager rent. Therefore, the rent which the 1st plaintiff is getting may not be sufficient to meet her regular expenses.

19. On overall consideration of entire material available on record, it is

evident that the 1st plaintiff belongs to scheduled caste and the defendant belongs to Yadava community; their marriage was performed in Arya Samaj; later, the defendant demanded dowry from the 1st plaintiff and she filed a case for the offence punishable under Section 498-A IPC. Ex.B8 is certified copy of judgment in C.C.No. 282 of 2001 which disclosed that the 1st plaintiff filed groundless complaint and living separately. Even if the property owned and possessed by the plaintiffs and the defendant are taken into consideration, still the defendant is under obligation to maintain the plaintiffs in view of Section 18 of the Act of 1956, more particularly when she is able to prove that there is justifiable cause for her separate living in compliance with Section 23 (2) (c) of the Act of 1956. Having regard to the requirements under Section 23 of the Act of 1956 including position and status of the parties, reasonable wants of the claimant and considering value of the property owned and possessed by both the 1st plaintiff and the defendant and income derived therefrom, reasonable amount is to be awarded towards maintenance. Here, the defendant, at best, is under obligation to maintain his mother if she is not in a position to maintain herself but she is a pensioner. Therefore, the defendant is not under obligation to maintain his mother also.

20. Considering the property owned and possessed by the defendant and the 1st plaintiff and the reasonable wants of the plaintiffs, we find that it is a fit case to award maintenance @ Rs.3,000/- p.m. to meet her necessities to lead same standard of life which the defendant is leading and also taking into consideration the present cost of living in a city like Hyderabad but the trial Court, only on the ground that the 1st plaintiff is practicing as an advocate and owned and possessed property, declined maintenance ignoring the circumstances which justified her separate living, property possessed by the defendant and his conduct in resigning to his employment in Bambino Industries.

21. The trial Court also declined to grant maintenance on the ground that maintenance of Rs.400/- p.m. was awarded to the 1st plaintiff in M.C.No. 1 of 2000 but grant of maintenance in maintenance case is not a ground to decline maintenance to the 1st plaintiff in view of the law declared by Apex Court in **Rajathi Vs. Ganesan**^[1], wherein the Supreme Court held that

"It will be apposite to keep provisions of Section 18 of Hindu Adoptions and Maintenance Act, 1956, which provide that a Hindu wife whether married before or after the commencement of the Act, shall be entitled to be maintained by her husband during her lifetime in view while considering the petition under Section 125 Cr.P.C."

22. Grant of maintenance in similar proceedings under Section 125 of Cr.P.C. would not disentitle the wife to claim maintenance under Section 8 of the Act of 1956. Therefore, grant of maintenance in maintenance case, which is summary in nature, by itself is not a ground to deny maintenance to the 1st plaintiff. Hence, considering all the facts and circumstances of the case, we find that the finding of the trial Court is erroneous and it is liable to be set aside. Accordingly, the finding of the trial Court is hereby set aside holding that the 1st plaintiff is entitled to maintenance @ Rs.3,000/- p.m. and the defendant is directed to pay Rs.3,000/- to the 1st plaintiff during her lifetime from the date of filing of the suit. Accordingly, the point is held in favour of the 1st plaintiff and against the defendant.

23. Admittedly, the 2nd plaintiff born during the wedlock of the 1st plaintiff and the defendant. The defendant, being father, is under obligation to maintain his son. The present suit was filed by both wife and son claiming maintenance under Sections 18 and 20 of the Act of 1956. Section 20 of the Act of 1956 says that

"A Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents."

Here, the plaintiffs already filed maintenance case in M.C.No. 1 of 2000 and obtained an order for payment of maintenance @ Rs.400/- p.m. to

each. By the date of filing suit in the year 2012, the 2nd plaintiff was aged 8 years and he was under the protection of the 1st plaintiff. Right now, the 2nd plaintiff is aged about 10 years and he is a school going child. When the 2nd plaintiff is prosecuting his studies, the parents have to incur necessary expenditure for education and welfare of the child providing all necessities including food, shelter, clothing, medicines etc.,. However, maintenance awarded by Judicial Magistrate of I Class in M.C.No. 1 of 2000 is not sufficient even to purchase medicines per month for a child or even to meet weekly pocket expenses of a school going child in a city like Hyderabad. Therefore, grant of maintenance at Rs.3,000/- p.m. to the 2nd plaintiff by the trial Court cannot be said to be excessive. Even otherwise, the trial Court, considering all the circumstances, awarded an amount of Rs.3,000/- p.m. from the date of suit.

24. One of the contentions of the defendant is that the trial Court would not have granted maintenance from the date of suit. According to settled law, maintenance shall be granted from the date of suit unless there are special circumstances which disentitle the plaintiff to claim maintenance during pendency of the petition. Here, no special circumstances are brought to the notice of this Court. Therefore, granting maintenance from the date of suit by the trial Court is just and reasonable. Hence, the finding of the trial Court does not call for interference of this Court. Accordingly, the point is held in favour of the 2nd plaintiff and against the defendant.

25. In the result, F.C.A.No. 307 of 2013 is allowed, setting aside the decree and judgment in O.S.No. 1 of 2012 insofar as denying maintenance to the 1st plaintiff, granting maintenance of Rs.3,000/- p.m. to the 1st plaintiff during her lifetime from the date of filing of the suit while dismissing F.C.A.No. 453 of 2013 confirming the decree and judgment in O.S.No. 1 of 2012 regarding grant of maintenance @ Rs.3,000/- p.m. to the 2nd plaintiff from the date of filing of the suit till he attains majority. Pending

miscellaneous petitions in these appeals, if any, shall stand dismissed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 02nd February, 2015.

JSK

[\[1\]](#) AIR 1999 SC 2374