

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

**Second Appeal No.313 of 2015
With
Civil Application No. 7672 of 2015**

Bhagwat s/o Ashroba Kale
And Others.

.. Appellants.

Versus

Sindhubai w/o Bhagwat Kale.

.. Respondent.

Shri. Kailash B. Jadhav, Advocate, for appellants.

Shri. Nilkanth Pawade, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 8th MARCH 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.124/2010 which was pending in the Court of the District Judge-2, Parbhani. The suit filed by respondent Sindhubai for getting maintenance and for keeping charge of the maintenance on the suit land is decided in her favour by the first appellate Court. Both the sides are heard.

2) Original defendant No.1 is husband of the plaintiff. Defendant Nos.2 and 3 are mother and sister of defendant No.1. Marriage of the plaintiff was solemnized with defendant No.1 about 14 years prior to the date of the suit. There was cohabitation of 3 years and it is alleged that as the parents of Sindhubai could not meet demands of the husband, she was driven out of the matrimonial house. It is contended that the defendant No.1 has married second wife.

3) Sindhubai had filed proceeding under section 125 of the Code of Criminal Procedure in the past and maintenance at the rate of Rs.350/- per month was granted in that proceeding. It is contended that warrant for recovery of arrears of maintenance was issued in that matter against the husband. He (defendant No.1) executed a document on 16-12-2002 and under that document gave 3 acres portion of the suit land for cultivation to Sindhubai. This document was titled as 'document of administration'. It is the case of Sindhubai that huge loan was taken on this property by the defendants and the property was already mortgaged. It is

her case that at that time her signatures were obtained by defendant No.1 on some blank papers. It is her case that she could not cultivate the land and so she did not get anything.

4) It is the case of Sindhubai that notice dated 3-11-2007 was again sent demanding maintenance from the defendant but this notice was not accepted. It is her case that she has no source of income. It is contended that the suit property, Gat No.82 admeasuring 6 hectares 78 R was owned by father of the defendant No.1 and at present defendant Nos.1 to 3 are enjoying the property. As the defendant 1 to 3 are entitled to have share in the property, they were made the defendants. It is the case of Sindhubai that annual income from aforesaid land of the defendant is more than Rs. 5 lac and so they are in a position to give maintenance at the rate of Rs.2500/- per month to her. In the suit, plaintiff had prayed for past maintenance also of three years.

5) The defendants contested the suit. They denied the aforesaid allegations. The husband denied that he had

deserted the plaintiff. He, however, admitted that in a proceeding filed under section 125 of the Cr.P.C., in the past, maintenance at the rate of Rs.350/- per month was granted in favour of Sindhubai. He also admitted that one document titled as "document of administration" was made in favour of Sindhubai and it was shown that 3 acres portion was given to Sindhubai for cultivation, to earn for livelihood. This document was registered on 16-12-2002. It is the case of the husband that Sindhubai cultivated this land for two to three years but afterwards she contended that she was not in a position to go to the land to cultivate and she requested to give some lump sum amount. It is the case of the defendant No.1 that he agreed to give Rs.90,000/- as lump sum amount and for that Sindhubai was to give up her rights of maintenance. It is contended that on 27-6-2005 amount of Rs.75,000/- was actually paid by husband to Sindhubai and remaining amount of Rs.15,000/- was to be paid prior to 30-11-2005. It is contended that in view of acceptance of lump sum amount, Sindhubai is not entitled to get maintenance again by filing such proceeding.

6) The issues were framed on the basis of the aforesaid pleadings. Both sides gave evidence. The trial Court held that lump sum amount was given to Sindhubai and she had given up the right of maintenance. The document at Exhibit 37 was considered by the trial Court. The first appellate Court has considered the provisions of Sections 18 and 25 of the Hindu Adoptions and Maintenance Act, 1956 and also section 23 of the Contract Act. The first appellate Court has held that in view of change in circumstances, Sindhubai has right to apply to the Court for getting maintenance. The first appellate Court has granted maintenance at the rate of Rs.1500/- per month for the period of starting date of suit till date of decision and at the rate of Rs.2500/- per month is granted for subsequent period. The defendants are prevented by the first appellate Court from alienating the property and the charge of the aforesaid maintenance is created on the suit property.

7) Oral evidence of the parties is as per the aforesaid contentions. The plaintiff deposed that she was prevented from cultivating the land and so she was unable

to cultivate the land. She further deposed that the defendants had obtained her signatures on some blank papers. She has given evidence that huge loan was taken by the defendants on the land and so she was virtually deceived. However, she admitted in the cross examination that she had relinquished her rights in the land for consideration of Rs.90,000/- and the amount of Rs.75,000/- was actually paid. She admitted her signature appearing on the document, Exhibit 37. Thus it cannot be inferred that forever she had relinquished the right to maintenance.

8) Defendant No. 1 has given evidence that Sindhubai had relinquished her right to get maintenance as she had agreed to accept Rs.90,000/- as lump sum amount for maintenance. He has given evidence on the aforesaid document, Exhibit 37. The document titled as "document of administration" was registered but the document Exhibit 37 was not registered. If the right in respect of immovable property was to be relinquished, it was necessary to register the document. Defendant No.1 has further admitted that he did not pay remaining

amount of Rs.15,000/- to Sindhubai. In view of these circumstances the District Court has held that the defendant No.1 has failed to prove that Sindhubai had relinquished her rights.

9) 7/12 extract of the land shows that mother of the defendant No.1 is owner of 4 Hectares 78 R portion and the sister is owner of 2 hectares land. Entry in other rights column is in the name of Sindhubai in view of the aforesaid registered document. The 7/12 extract shows that loan of Rs.3.5 lac is taken by the mother on this land and the land is mortgaged. In the 7/12 extract crops like cotton, jawar were shown but from the year 2005 onwards sugarcane crop was taken in a portion of 60 R. Even a labour was able to earn more than Rs.150/- per day in the year 2007. There was income from the agriculture also to the husband. In view of these circumstances, it cannot be said that maintenance at the rate of Rs.2500/- per month is on higher side. The decision is on the question of facts and this Court sees no reason to interfere in the present matter. No substantial question of law as such is involved in the present appeal.

10) In the result, the appeal stands dismissed. Civil Application stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

rs1