

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

20 SECOND APPEAL NO. 69 OF 2016
WITH CA/1074/2016 IN SA/69/2016

SAHEBA RAMBHAU SANAP
VERSUS
ZAMBUBAI SAHEBA SANAP

...
Advocate for Appellant : Bolkar Yogesh B
Advocate for Respondent : Kakade N.K. And D. R. Markad
...

CORAM : T.V. NALAWADE, J.
DATED : 1st July, 2016.

ORDER :

1. The appeal is filed by original defendant of maintenance suit to challenge the judgment and decree of the Trial Court which is confirmed by the First Appellate Court. Both the sides are heard.

2. Present respondent had filed Special Civil Suit No. 47/2012 in the Court of Civil Judge, Senior Division, Ahmednagar under the provision of section 18 of the Hindu Adoptions and Maintenance Act, 1956 for maintenance and also for past maintenance. She had claimed maintenance at the rate of Rs. 15,000/- per month and for the period of previous three years, she had claimed past maintenance of Rs. 5.4 lakh. It is her case that she is deserted by defendant and he has married second

wife and he has not made any provision for her maintenance. It is her case that the defendant owns agricultural land and he owns milch cattle also and his income from agricultural land is more than Rs. five lakh and his income from milk business is more than Rs. 2,400/- per day.

3. The husband filed written statement and contested the matter. He contended that the wife did not cohabit even for a year with him. He contended that he had filed proceeding for restitution of conjugal rights bearing H.M.P. No. 98/1981, but even after the settlement of the matter in that proceeding, wife did not resume cohabitation. He contended that he has become old and he is not making any income and he is not able to make separate provision for maintenance of plaintiff. He denied that he had married second wife. He contended that plaintiff has got share in the father's property and she is getting income of more than Rs. three lakh from that property and so, she does not need any amount from the defendant.

4. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. On the basis of oral and documentary evidence, the Trial Court awarded maintenance at the rate of Rs. 4,000/- per month and this

decision is confirmed by the First Appellate Court.

5. The learned counsel for appellant, husband submitted that the wife has admitted that her name is mutated in the revenue record of the property left behind by her father and so, inference was easy that she was getting income from that property. It is true that there is such admission, but only due to death of father, the names of all the successors of father are recorded in the revenue record like plaintiff her brothers. It is brought on the record that the wife was required to do labour work and she was earning Rs. 100/- per day. This circumstance shows that wife was required to do labour work to earn livelihood. She has now become old and so husband needs to make arrangement of maintenance for her. Though husband is old, the evidence of husband shows that he has married second wife and he has issues from second wife. The record like voters list is produced to show that he is living with his family from second wife. Admittedly, he owns atleast 2 Acres of agricultural land. He must be in milk business. He hails from Pathardi, District Ahmednagar and so, the case of wife that he is doing milk business is believed by the Courts below. The evidence of husband is to the effect that no other person is depending on him. In view of this circumstance, the maintenance at the rate of

Rs. 4,000/- per month is awarded by the Courts below. No decree of past maintenance is given and maintenance is made payable from the date of the suit.

6. The findings recorded by the Courts below are findings on facts. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

SSC/