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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.768 OF 2013

WITH
CIVIL APPLICATION NO.1812 OF 2013
IN
SECOND APPEAL NO.768 OF 2013

Vasant K. Nimse

...Appellant
Ori. Defendant

V/s.

Manda V. Nimse

...Respondent
...Ori. Plaintiff

Mr.Tushar Sonawane for the Appellant.
Mr.Girish Agrawal for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 23RD AUGUST, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, the appellant (original defendant) has impugned the judgment dated 16th September, 2013 passed by the learned Principal District Judge, Nashik dismissing Regular Civil Appeal No.13 of 2009 filed by the appellant. The appellant has impugned the judgment and decree dated 8th December, 2008 passed by the Learned Third Joint Civil Judge, Junior Judge, Nashik in Special Civil Suit No.375 of 2006 filed by the respondent herein (original plaintiff)

under section 18 of the Hindu Adoption & Maintenance Act, 1956.

2. It was the case of the original plaintiff that she had married to the appellant herein (original defendant) on 13th May, 1983 at Nashik as per Hindu rites and customs. It was her case that since she had no parents, she was maintained by her maternal uncle till her marriage and after her marriage, the plaintiff had gone to the house of the defendant for co-habitation. The defendant was serving in V.I.P. Company at Nashik and was earning salary of about Rs.30,000/- per month. It was the case of the plaintiff that the plaintiff was driven out of the matrimonial home and her two children begotten of the said marriage with the defendant and were not maintained by the defendant, the plaintiff applied for maintenance 18 of the Hindu Adoption & Maintenance Act, 1956. The suit was resisted by the defendant by filing written statement.

3. The learned trial Judge framed three issues, including the issue as to whether the plaintiff proved that she was legally wedded wife of the defendant and as to whether the defendant had deserted and neglected to maintain her. The plaintiff examined herself, her maternal uncle and one Mr.Madhukar Varuji Hamre. The defendant examined himself and Vijaya Vasant Nimse.

4. It was the case of the defendant before the learned trial Court that the defendant was not married to the plaintiff and was

already married to Vijaya much prior to the alleged marriage of the plaintiff with the defendant. It was the case of the defendant before the learned trial Court that the plaintiff was fully aware of the marriage of the defendant with the said Vijaya. In support of this submission, the defendant also placed reliance on the cross-examination of the plaintiff before the learned trial Court to the effect that when she went to matrimonial home, she came to know that the defendant was already married to another lady.

5. The learned trial Judge after considering the entire evidence passed an order and decree directing the defendant to pay Rs.3,000/- per month as maintenance amount to the plaintiff from the date of the suit.

6. Being aggrieved by the said judgment and decree dated 8th December, 2008 passed by the learned trial Judge, the defendant filed an appeal (Regular Civil Appeal No.13 of 2009) before the learned Principal District Judge, Nashik. The learned Principal District Judge, Nashik dismissed the said appeal on 16th September, 2013.

7. Learned counsel appearing for the defendant submits that the onus was on the plaintiff to prove that she was legally wedded wife of the defendant. He submits that the plaintiff failed to prove that the Saptapadi was performed between the plaintiff and the defendant. He submits that even in the cross-examination the plaintiff admitted

that the defendant was already married to another lady. He submits that the plaintiff could not have applied for maintenance under the provisions of section 18 of the Hindu Adoption & Maintenance Act, 1956 since she could not prove before the learned trial Court that she was legally wedded wife of the defendant.

8. It is submitted by the learned counsel for the defendant that even in her cross-examination before the learned trial Court, she admitted that she was carrying out the business of selling vegetables and was earning sufficient amount to maintain herself and her two children.

9. Mr.Agrawal, learned counsel appearing for the plaintiff on the other hand invited my attention to the evidence of the plaintiff and defendant and other witnesses. He submits that even according to the defendant when he was already married to Vijaya, the age of Vijaya disclosed before the Court was 10 years or 15 years on the date of her alleged marriage with the plaintiff. He submits that even according to the said evidence led by the defendant and by Vijaya, she being a minor could not have married to the defendant.

10. Learned counsel for the plaintiff invited my attention to the cross-examination of the defendant before the learned trial Judge in which he deposed that he had sexual relationship with the plaintiff and was paying some money to the plaintiff for having intercourse

with the plaintiff. He deposed that except having said illicit relationship with the plaintiff, he had no other relationship with the plaintiff. It is submitted by the learned counsel for the defendant that merely because two children were begotten to the plaintiff out of the relationship between the defendant and the plaintiff that would not prove the marriage between the plaintiff and the defendant.

11. Mr.Agrawal, learned counsel appearing for the plaintiff on the other hand invited my attention to the findings of fact recored by the two Courts below and would submit that the findings being not perverse and there being no substantial question of law having arisen in this appeal, this Court cannot interfere with the impugned judgments and orders passed by the two Courts below. He submits that the learned trial Judge has considered the entire evidence led by both the parties and has rightly come to the conclusion that the plaintiff was the wife of the defendant and that the defendant had neglected and refused to maintain her and thus she was entitled to maintenance under section 18 of the Hindu Adoption & Maintenance Act, 1956. He submits that the plaintiff had proved beyond reasonable doubt before the learned trial Judge that she was the wife of the defendant. He submits that the Appellate Court have independently considered the evidence led by the parties and has rendered the findings of fact which cannot be interfered with by this

Court.

12. A perusal of the judgment and decree passed by the learned trial Judge indicates that the learned trial Judge has considered the entire evidence led by both the parties and held that the defendant herein was serving in V.I.P. Company and was getting Rs.30,000/- per month as a salary. The defendant did not deny that there were two children begotten out of the relationship between the plaintiff and the defendant. The plaintiff had examined herself, her maternal uncle and one Madhukar V. Hamre. The defendant examined himself and Vijaya V. Nimse, who is the alleged first wife of the defendant. The plaintiff in her evidence proved before the learned trial Judge that the defendant had performed second marriage with Vijaya and the said Vijaya had two children from the defendant. The other witnesses examined by the plaintiff also proved that the defendant was married to the plaintiff.

13. The Appellate Court considered a crucial document i.e. election identity card of Vijaya Nimse, who was the alleged first wife of the defendant, which showed that on 1st January, 1994, her age was of 25 years. It was the case of the defendant that his marriage with Vijaya was performed in the year 1979 i.e. 15 years before 1994. The Appellate Court accordingly held that if the plea of the defendant was accepted that he was married to Vijaya in the year 1979, the age

of Vijaya was 10 years at that time. The said Vijaya however in her examined in chief stated that at the time of her marriage, her age was 15 to 16 years. The Appellate Court noticed the discrepancy in the oral evidence and the documentary evidence in respect of the age of of Vijaya Nimse at the time of her alleged marriage with the defendant. In my view, the Appellate Court thus rightly disbelieved the case of the defendant that he was already married to Vijaya Nimse much prior to the date of having the alleged illicit relationship with the plaintiff.

14. The Appellate Court also considered the ration card produced by the defendant in the evidence in which in the year 1994, the age of Vijaya was shown as 12 years. The defendant did not produce the proof of marriage alleged to have been performed in respect of his alleged marriage with the plaintiff. The Appellate Court has rendered a finding that in the ration card which was produced by the defendant showed that the defendant was residing along with the children of the plaintiff herein and accordingly rendered a finding that it was not possible to believe that the man would maintain the children begotten to a woman with whom he had sexual relationship at the cost of intercourse in his home along with real wife and legitimate children.

15. Insofar as the submission of the learned counsel for the

defendant that the plaintiff had failed to prove Saptapadi with the defendant in support of her case that she was married to the defendant is concerned, the witnesses examined by the plaintiff including herself sufficiently proved beyond reasonable doubt before the learned trial Judge that she was married to the defendant, whereas the defendant failed to prove that he was already married to Vijaya prior to his marriage with the plaintiff. The learned trial Judge has taken into consideration the entire evidence on record and has rightly rendered the finding of fact that the defendant was married to the plaintiff and that the defendant had failed to prove his marriage with Vijaya Nimse prior to the date of the marriage of the defendant with the plaintiff. In my view, the findings of fact rendered by the learned trial Judge and also by the Appellate Court are not perverse and thus cannot be interfered with by this Court in this second appeal.

16. Insofar as the submission of the learned counsel for the defendant that merely because two children were begotten out of the relationship between the defendant and the plaintiff, there cannot be a presumption of marriage is concerned, the evidence on record before the learned trial Court clearly indicates that the defendant had been staying with the plaintiff. The name of the two children admittedly begotten out of the said alleged relationship between the

defendant and the plaintiff and who were staying with the defendant were recorded in the ration card along with the defendant. The defendant on the contrary failed to prove that he was already married with the said Vijaya Nimse prior to the marriage with the plaintiff.

17. Insofar as the submission of the learned counsel for the defendant that he is already retired and has no source of income to maintain the plaintiff is concerned, no such proof is produced by the defendant before the learned trial Judge or before the Appellate Court. The plaintiff though at one stage was selling vegetables and was earning a paltry sum, there was no proof on record to show that she continued to work and was able to maintain herself. I am thus not inclined to accept this submission of the learned counsel for the defendant.

18. In my view, the appeal is devoid of merits. No substantial question of law has arisen in this appeal.

19. I therefore, pass the following order :-

- a). Second Appeal No.768 of 2013 is dismissed.
- b). No order as to costs.

20. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed.

(R.D. DHANUKA, J.)