

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2737 of 2016

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 26.04.2016 passed in C.F.R.No.857 of 2016, wherein the Senior Civil Judge, Srikalahasti, returned the O.P. on the ground of maintainability.

The facts in issue are as under:

The petitioner who is the daughter of the respondent herein filed O.P. under Section 20 of the Hindu Adoption and Maintenance Act, 1956 (for short "the Act"), directing the respondent to pay a sum of Rs.6,41,333/- towards arrears of maintenance from 19.07.2013 till the date of filing of O.P. and to direct the respondent to pay maintenance of Rs.20,000/- per month in future.

The office took an objection with regard to maintainability of O.P. claiming past and future maintenance from the respondent without filing suit.

After referring to Section 20 of the Act the trial Court observed as under:

"Section 20 of the Act enables, legitimate or illegitimate children, aged or infirm parents are entitled to claim maintenance from the fathers and children respectively. The said provision does not speak whether a O.P. is to be filed or suit is to be filed for claiming the said maintenance. There is no specific provision in the said Act with regard to inherent jurisdiction of the Court and

procedure for claiming the maintenance by the said person, unlike provisions under the Hindu Marriage Act, 1955. Under Section 24 of the Hindu Marriage Act, 1955, pendent elite maintenance can be granted to the parties entitled. Section 25 of the Act the said Court also empowers the competent Court to grant permanent alimony and maintenance at the time of passing decree or any time subsequent thereto, on the application made it either by wife or husband. By virtue of Section 7 (1) (f) of Family Court Act, 1985, the Family Court can grant maintenance to the wife and children by entertaining application (OP). As stated supra, there is no specific provision in the Hindu Adoption and Maintenance Act, 1956 enabling the Senior Civil Judge Court to entertain a petition from minor son and grant maintenance from his father. In the light of above foregoing discussion the O.P. is returned.”

Learned counsel for the petitioner submit that the petitioner paid the Court Fee of Rs.11,326/- for past and future maintenance. As per Section 20 of the Act the petitioner, who is the minor daughter of the respondent is entitled to claim maintenance from her father.

Before proceeding further it would be relevant to extract Section 20 of the Act, which reads as under:

"20. Maintenance of children and aged parents:

(1) Subject to the provisions of this Section 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.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is as minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, unable to maintain himself or herself out of

his or her own earnings or other property.

Section 18 of the Hindu Adoption and Maintenance act is a beneficial piece of legislation which provides for maintenance of wife wherein the wife has been either deserted, treated with cruelty or is suffering from leprosy and on various other grounds. The said provision also entitles the Hindu wife to the right of residence and maintenance. Similarly, Section 20 of the Hindu Adoption and [Maintenance Act](#) provides for maintenance of children and aged parents. However, the provision of Section 18 of Hindu Adoption and [Maintenance Act](#) has been provided to a Hindu wife only against her husband and not against her inlaws. Similarly, Section 20 of Hindu Adoption and [Maintenance Act](#) is also provides for the maintenance of the children against their parents and for the maintenance of aged parents against their off spring respectively.

A perusal of the plaint copy would show that the petitioner valued the past maintenance and future maintenance for Rs.8,81,333/- and paid Court fee of Rs.11,326/-. Hence, the argument that the petitioner filed O.P. instead of suit only to avoid payment of court fee cannot be accepted. Admittedly the petitioner has paid the Court fee on the total value of past maintenance and future maintenance. Since there is no provision in the Act for filing original petition or suit and it being a beneficial legislation the order of the Court below in returning the O.P. as not maintainable warrants interference.

In view of the above, the C.R.P. is allowed and the Senior Civil Judge, Srikalahasti, is directed to number the O.P. if it is otherwise in order. There shall be no order as to costs.

Miscellaneous Petition, if any, pending in this Civil
Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.07.2016

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