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

**SECOND APPEAL NO. 750 OF 2012
WITH
CIVIL APPLICATION NO. 9438 OF 2011**

Uttam s/o Khuba Chauhan,
Age: 31 years, Occu: private service,
R/o. Deotala Tanda, Taluka AUSA,
District Latur

..APPELLANT
(Orig.deft.No.1)

VERSUS

1. Ushabai w/o Uttam Chauhan,
Age: 28 years, Occu: Labourer
2. Vikram s/o Uttam Chauhan,
Age: 8 years, Occu: Nil,
Minor under the guardianship of
Respondent No. 1 natural mother

Both residents of Utkha Tanda,
Taluka AUSA, Dist. Latur

3. Khuba s/o Ananda Chauhan,
Age: 71 years, Occu: Agriculture,
R/o Deotala Tanda, Taluka AUSA,
Dist. Latur

..RESPONDENTS

Mr Kalyan Patil, Advocate holding for Mr S. R. Barlinge, Advocate for
appellant;
Mr M. L. Dharashive, Advocate for respondent Nos.1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 5th July, 2017

ORAL ORDER

Respondent no.1 Usha was married to the present appellant –
defendant no.1 on 15th March, 1996 and out of the said wedlock
respondent no.2 Vikram was born.

(2)

2. It is the case of the respondents no.1 & 2 – plaintiffs that the appellant has driven out respondent no.1, neglected her to maintain and as such she brought suit under Section 18 of the Hindu Adoptions and Maintenance Act for grant of maintenance for herself and her son Vikram. The learned Trial Court after considering the written statement at Exh.12 decreed the suit and awarded monthly maintenance of Rs.600/- to the wife and Rs.400/- to the son, which was further confirmed in appeal. Thus, the present second appeal.

3. Learned Counsel appearing on behalf of the appellant would urge that respondent no.1 – plaintiff no.1 is admittedly working as Anganwadi Sevika and at the relevant time was drawing honorarium of Rs.1,431/- per month. According to him, in view of the same i.e. independent source of income of plaintiff no.1, she was rightly held to be not entitled for maintenance in the proceedings under Section 125 of the Code of Criminal Procedure. In spite of the same, the Courts below, without appreciating the said issue have decreed the suit. In addition, he would plead subsequent development of respondent no.1 being getting status of a permanent employee as Anganwadi Sevika and drawing salary of Rs.14,000/- per month. Learned Counsel would urge that the appellant is a labour and but for earning of Rs.6,000/- per month, there is no dependent source.

(3)

4. Per contra, Mr Dharashive, learned Counsel appearing on behalf of respondents no.1 and 2-plaintiffs would urge that in spite of the decree, no maintenance is paid by the appellant to the plaintiffs from 2003. According to him, the factual matrix as is narrated at the relevant time includes the evidence of the witness of the plaintiff B.D.O. Laxmikant, examined at Exh.22, who has stated about receipt of the honorarium by plaintiff no.1. He would then urge that the amount of maintenance awarded is in addition to the said source of income. He, therefore, sought dismissal of the appeal.

5. At the outset, it is required to be noted that the factual matrix and the evidence as is narrated during the course of decision on the suit is required to be taken into account. There is no application or an affidavit moved by the appellant bringing subsequent developments as pleaded during the hearing. In the aforesaid backdrop if submissions of the appellant are analyzed, receipt of honorarium by plaintiff no.1 as Anganwadi Sevika is not in dispute. What is required to be appreciated is, the present appellant, an agriculturist and also having independent source of income whether can be directed to pay maintenance of Rs.600/- and Rs.400/- per month, respectively.

6. The evidence as is brought on record depicts that the present appellant is prosecuted for an offence punishable under Section 494 of the Indian Penal Code, as it is claimed that the appellant has married to one Kavita. It is informed that the said prosecution against the appellant is pending.

(4)

7. In the aforesaid background, the case as was sought to be put-forth by respondent no.1 of neglect to maintain is admittedly proved.

8. So far as the source of income of the appellant is concerned, it has come on record that from mother's side he has received certain land in addition to the one which is held by his father. Apart from above, it is claimed that he is doing some labour work.

9. In the aforesaid background, quantum of maintenance of Rs.600/- and Rs.400/- per month respectively, ordered by both the Courts below appears to be reasonable. No case for interference in second appellate jurisdiction is made out. Second Appeal, therefore, fails and stands dismissed. In view of dismissal of Second Appeal, pending Civil Application does not survive and stands disposed of.

(N.W. SAMBRE, J.)

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