

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.178 OF 2017

Asha wd/o Vandesh Kukudkar

..vs..

Sau. Shantabai w/o Shrirang Kukudkar

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A.S. Kinkhede, Adv. h/f Shri R.R. Vyas, Counsel for the appellant.
Shri N.R. Bhisikar, Counsel for the respondent.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 23, 2017.

1. **Heard Advocate Shri A.S. Kinkhede h/f learned counsel Shri R.R. Vyas for the appellant and learned counsel Shri N.R. Bhisikar for the respondent.**

2. **The present appeal is by original defendant.**

3. **A suit filed by the respondent/plaintiff, who is mother-in-law of the appellant/defendant, under Section 22 of the Hindu Adoption and Maintenance Act, 1956 was decreed and an appeal carried against the same stands dismissed.**

4. **Admittedly, Vandesh, the deceased was the husband of the appellant/defendant and son of the respondent/plaintiff. He died during harness. The appellant/defendant was given compassionate**

appointment. The Courts below decreed the suit since the appellant/defendant was given compassionate appointment in place of Vandesh.

5. After hearing both learned counsel for the parties, the present second appeal requires admission and, therefore, the second appeal is ADMITTED on the following substantial questions of law:

(i) Whether words used in Sub section (1) of Section 22 of the Hindu Adoption and Maintenance Act, 1956 as “*out of the estate*” include the job under compassionate appointment?

(ii) Whether the suit was properly filed inasmuch as the daughters of respondent/plaintiff are the necessary parties?

6. Learned counsel Shri N.R. Bhisikar waives notice for the respondent.

Civil Application No.302/2017

1. This is an application for grant of Stay.

2. A suit for maintenance was filed by mother-in-law against her widowed daughter-in-law which is

decreed and an appeal carried against the same is dismissed.

3. Today, the Court has admitted the second appeal since it involves substantial questions of law.

4. Insofar as the question of Stay is concerned, normally the Courts are always slow in granting the Stay to the decree of maintenance. However, in peculiar circumstances of this case, the Court is granting Stay in favour of the appellant.

5. It is an admitted position that the respondent/plaintiff is having her husband and the land is allotted to him since he is required to leave his original place since he is receiving threats from Naxals. Further, it is also an admitted position that the respondent/plaintiff is having two daughters. One of them is serving in the police department and another is an Anganwadi Sevika. It is also an admitted position that the appellant/defendant, after she lost her husband, has been given compassionate appointment as a junior clerk in a Primary Health Centre at Mulchera. It is also an admitted position that she is required to maintain her two sons who are taking their education. Nothing is brought on record by the respondent/plaintiff to point out that her daughters are not provided anything or she has filed any proceeding for maintenance against them.

6. It appears to this Court that the respondent/plaintiff is after her widowed daughter-in-law who is under obligation to maintain not only her two minor children but to provide them proper education. There is nothing brought on record by the respondent/plaintiff that she is not having anything with her by which it could be said that she is unable to maintain herself.

7. In that view of the matter, the application is allowed. The effect and operation of judgment and decree passed by learned Civil Judge Junior Division at Charmorshi in Regular Civil Suit No.4 of 2014 dated 12.8.2016 and judgment and decree passed by learned District Judge-2 at Gadchiroli in Regular Civil Appeal No.49 of 2016 dated 16.1.2017 shall remain stayed during the pendency of the second appeal.

8. The civil application is allowed and disposed of.

JUDGE

!! BRW !!

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