

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.4276 of 2017

ORDER

The revision petitioner is no other than mother-in-law of the revision 1st respondent and paternal grandmother of the revision respondents 2 and 3 minors represented by mother revision 1st respondent.

2. O.P.No.1218 of 2016 was filed by the revision 1st respondent/petitioner claiming maintenance under Hindu Adoptions and Maintenance Act(for short, 'the Act') against the revision petitioner on the file of the Additional Family Court, at Hyderabad. Pending disposal of the same, I.A.No.656 of 2016 filed by them seeking interim maintenance at Rs.25,000/- per month besides legal expenses of Rs.15,000/-. After contest, the learned Judge, Family Court, by the impugned order, dt. 01.07.2017 allowed the same in part directing the revision petitioner to pay interim maintenance at Rs.20,000/-p.m. to the revision respondents 1 to 3 together from date of filing of the petition i.e. on 07.09.2016 pending disposal of the petition, to pay on or before 5th day of every Calender month and also to pay arrears of interim maintenance amount in two equal monthly installments commencing from July, 2017 and further directed to deposit interim maintenance and arrears amount in the bank account of the revision 1st respondent directly which shall be furnished by her to the revision petitioner and further held the that the revision 1st respondent not entitled to separate legal

expenses but for to meet out of it. By impugning the same, the present revision is filed by the OP respondent.

3. Heard the learned counsel for the revision petitioner vis-à-vis the revision respondents and perused the grounds urged in the revision and the impugned order.

4. There is no controversy though not specifically worded by Section 3 of the Act, and at least from the Full Bench expression of this Court in P.Srinivasa Rao Vs. P.Indira¹ that pending disposal of suit for maintenance under the Act, interim maintenance can be claimed though not specifically provided as per Section 3 of the Act r/w Sec.151CPC. The only thing to consider here is whether the revision respondents are entitled to by virtue of enablement any interim maintenance from the revision petitioner, leave about the entitlement of maintenance in the final disposal.

5. It is premature to go into the proposed evidence and ultimately what can be proved as to any property inherited by the revision petitioner from her deceased husband vis-à-vis the father-in-law of the revision 1st respondent and grandfather of the minors/ revision respondents 2 and 3 much less any coparcenery or joint family property. Here as of now, from the perusal of the impugned order covered by the pleadings, there is no property inherited by the revision petitioner from her deceased husband. The only thing taken for consideration before the lower Court in

¹ 2002 (1) ALD 296=2002 (1) ALT 67

granting interim maintenance is that the husband of the revision petitioner was a public servant and she is a pensioner and what the pension she is getting is within the meaning of estate thereby she is bound to provide maintenance to the petitioners towards interim maintenance. Sub-Section 2 of the Section 20 of the Act no way describes a daughter-in-law within the meaning of dependent but for from Section 21 clause-iv speaks of sons of a pre-deceased son of his or her are dependants. Section 22 of the Act which runs in 4 sub clauses, the sub clause 2 speaks *Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate*, for the estate as the sub-section-1 speaks that it is subject to sub-section-2 supra, the heirs of deceased Hindu are bound to maintain the dependant what they inherited out of the estate from the deceased. Sub-sections 3 and 4 are not of much germane.

6. Here two aspects are required for consideration, one is inheritance and the other is estate of the deceased. It is not even the case that from the revision petitioner's deceased husband service, any pension is receiving by the mother of the deceased-husband of the revision 1st respondent but for what the pension she receives is after death of her husband who served in

Government. The Apex Court in Jodh singh Vs. Union of India², observed that the concept of family pension payable to the widow on the death of the officer is not payable in his lifetime and what is not payable during his lifetime over which he has no power of disposition as it cannot form part of his estate. There the question arising was can he bequeath by his will about his pensionary and other service benefits payable after his death which are not accrued in his lifetime. Even from the Dictionary meaning as the Justice L.P.Singh P.K.Majumdar Judicial Dictionary 2nd Edition, *the Word Estate doth comprehend all that a Man hath Property or Ownership in, and is divided into Real and Personal.*

7. It clearly indicates what he died possessed is estate but what will be accrued after his lifetime is not estate. Once such is the case, what is the family pension payable to the widow of the deceased officer, cannot form part of the estate even within the meaning of Sections 21 and 22 of the Act, even the revision respondents 2 and 3(minors) are within the meaning of dependants on the revision 1st respondent for she is not even a dependant for no estate of the late father of the deceased, she could succeed.

8. Accordingly and in the result, the Revision is allowed by setting aside the order, dt.01.07.2017 in I.A.No.656 of 2016 on the file of the Addl.Family Court, at Hyderabad, without

² AIR 1980 SC 2081

prejudice to available defence and rights in the pending main matter to dispose of on own merits. Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:07.12.2017
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