HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHAVA RAO

CIVIL MISCELLANEOUS APPEAL No.4808 of 2004

JUDGMENT: (per Hon'ble Sri Justice P. Keshava Rao)

Heard counsel for the appellants. Though notice is served on the 1st respondent, she has not chosen to appear before this Court either in-person or by appointing any advocate.

Appellants, who are the defendants, in O.S.No.77 of 2001 on the file of the Court of the Family Judge, Hyderabad, filed the present miscellaneous appeal aggrieved by the judgment and decree, dated 23.07.2003, directing them to pay a sum of Rs.500/- and Rs.400/- per month to the respondents respectively towards their maintenance from the date of filing of the suit.

Originally, the respondents herein filed the above mentioned suit claiming a sum of Rs.1,500/- each per month towards maintenance against the appellants herein. It is the case of the respondents that the 1st respondent marriage was performed with the son of the appellants herein on 17.02.2000. Out of the wedlock, they were blessed with the 2nd respondent. On 02.02.2001, the husband of the 1st respondent died and after his death the appellants herein, ill-treated and harassed the 1st respondent due to which she left the matrimonial house and started living in her parents' house along with the 2nd respondent, since she has no source of income. She also stated that the 1st appellant herein is a retired employee of DRDL, a Central Government organization, and is getting a pension of Rs.2,500/- per month in addition to earning Rs.3,000/- per month by virtue of doing business of supplying building material apart from having a house property worth Rs.3,00,000/-. In those circumstances, she filed the suit claiming maintenance of Rs.1,500/- per month each to them.

Per contra, the appellants have filed written statement denying the plaint averments and contended *inter alia* that their son i.e., the husband of the 1st respondent herein died due to the harassment meted out to him by the 1st respondent and after the death of their son, there was a settlement made by the elders in pursuance of which they have returned all the articles to the 1st respondent in addition to paying Rs.20,000/- to her on 15.04.2001 in the presence of the elders. The appellants also have stated that the 1st respondent is earning by way of working in a company. However, the 1st appellant is getting a meagre amount towards pension and he does not have any business as alleged by the 1st respondent and they are suffering with ailments and sought for dismissal of the suit.

Basing on the said pleadings, the Court below framed the following issues:

> "1. Whether the plaintiffs are entitled to maintenance from defendants. If so, to what amount and from what date?
>
> 2. To what relief?"

During the course of trial, the 1st respondent examined herself as PW.1 and marked Ex.A1, which is the marriage invitation card. The 1st appellant herein examined himself as DW.1 and no documents are marked on his behalf.

The Court below after appreciating the pleadings and the material available on record, decreed the suit in part, directing the appellants to pay a sum of Rs.500/- and Rs.400/- per month to the respondents towards monthly maintenance from the date of filing of the suit by judgment and decree, dated 23.07.2003. Aggrieved by the same, the appellants, who are the defendants, filed the present appeal in this Court.

Counsel for the appellants basically contended that the Court below failed to appreciate the conditions envisaged under Section 19 of the Hindu Adoption and Maintenance Act (for short, "the Act") and even though the ingredients of Section 19 of the Act are not satisfied, partly decreed the suit. He also contended that an application under Section 19 of the Act is maintainable by a daughter-in-law when she is unable to maintain herself out of her own earnings. He also contended that an obligation to maintain daughter-in-law under Sub-Section (1) of Section 19 arises only in case where the father-in-law has got means to do so from any coparcenary property. Since no evidence is let in in that regard, the Court below committed an error in partly decreeing the suit. That apart, the 1st appellant is receiving only a meagre pension amount of Rs.1,500/- and out of which he has to maintain himself and the 2nd appellant and because of the age related illness they hardly find the amount as sufficient. He also contended that since the parents of the 1st respondent are not added as parties to the suit, it is not possible as to whether they were having any sufficient means to maintain the 1st respondent or not. In the absence of any finding in that regard, the question of obligation of the 1st appellant to maintain the respondents does not arise. On these grounds, he sought to set aside the judgment and decree passed by the Court below.

For the purpose of appreciating the scope and ingredients of Section 19 of the Act, the same is extracted below.

> "**19. Maintenance of widowed daughter-in-law:**
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> (1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:
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> Provided and to the extent that she is unable to maintain herself out of her own earnings or other property

> or, where she has no property of her own, is unable to obtain maintenance-
>
> (a) from the estate of her husband or her father or mother, or
>
> (b) from her son or daughter, if any, or his or her estate.
>
> (2) Any obligation under sub-section (1) shall not be enforceable if the father-in law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law."

A reading of the above said provision would reveal/contemplate that a Hindu wife whether married before or after commencement of the Act shall be entitled to be maintained after the death of her husband by her father-in-law provided she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to maintain from the estate of her husband or her father or mother or from her son or daughter if any, or his or her estate. However, under Sub-Section (2) of Section 19 of the Act it is mentioned that the obligation of the father-in-law shall not be enforceable if the father-in-law has no means to do so from any coparcenary property in his possession and out of which the daughter-in-law has not obtained any share and any such obligation shall cease on the re-marriage of the daughter-in-law.

In the case on hand, the case of the respondents herein is that the 1st respondent is unable to maintain herself consequent upon the death of her husband and on the other hand, the 1st appellant is getting Rs.2,500/- per month towards pension and Rs.3,000/- per month by virtue of doing business of supplying building material apart from owning a property worth Rs.3,00,000/-. However, the 1st appellant contended that he is getting a sum of Rs.1,500/- per month only and he is not doing any other business. However, he has not filed any document to show as to how much pension he is getting, leave alone Rs.1,500/- as contended by him or Rs.2,500/- per month as contended by the 1st respondent. In fact, the 1st appellant is the best person to produce the evidence in that regard and since he has withheld the said evidence from producing into the Court an adverse inference has to be drawn against him and the contention raised by the 1st respondent that the 1st appellant is getting a sum of Rs.2,500/- towards pension goes unrebutted. Though the 1st respondent has contended that the 1st appellant is getting a sum of Rs.3,000/- per month from his business in addition to pension of Rs.2,500/- per month, she has not produced any material before the Court to substantiate the same and therefore the same cannot be accepted. The appellants also have taken a contention that after demise of their son, there was settlement and in pursuance of which they have returned all the articles to the 1st respondent in addition to payment of Rs.20,000/- towards full and final settlement of her claims and therefore she is not entitled to claim any maintenance against them. However, in the cross-examination, the 1st appellant has categorically admitted that the amount of

Rs.20,000/- referred to at para 7 of the chief-examination belongs to PW.1 only. In the light of the said admission it can be safely inferred that what all that is paid to the 1st respondent in the settlement is only her belongings and her amount. Apart from receiving the pension amount of Rs.2,500/- per month, the 1st appellant has got a house property comprising of five rooms, which fact was not denied by the 1st appellant.

The other important aspect in the matter is that the intention of the Legislature in enacting Section 19 of the Act is to safeguard the welfare and interest of a widowed daughter-in-law. For the purpose of invoking Section 19 of the Act, the basic ingredient is that the daughter-in-law is unable to maintain herself out of her own earnings or other property or where she has no property of her own, is unable to obtain maintenance from the estate of her husband or her father or mother and etc. The 1st respondent has categorically pleaded that she is unable to maintain herself along with the 2nd respondent out of her own earnings or other property and etc. Since the father of the 1st respondent already died, the appellants have not even pleaded that the mother of the 1st respondent has got sufficient means to maintain the respondents nor any suggestion is given to that effect in the cross-examination of PW.1. So in the absence of any such pleading and evidence, the contention of the appellants cannot be countenanced in the Court of law.

Before parting it is relevant to mention that after the enactment of the Act the rights of daughter-in-law for maintenance have been codified. Section 19 provides for maintenance of widowed daughter-in-law by her father-in-law under the circumstances mentioned therein. Under Section 21 of the Act, the widow of pre-deceased son is the dependant. Section 22 contemplates maintenance of the dependents. Therefore, the matters in respect of maintenance of widowed daughter-in-law are governed by the Act, where the death of the father-in-law takes place subsequent to the coming into force of the Act.

Further, with relevance to the abovesaid provisions an issue has cropped up before this Court as to whether the moral obligation of the father-in-law possessed of separate or self-acquired property to maintain the widowed daughter-in-law ripens into the legal obligation in the hands of persons to whom he has either to bequeath his property or made gift in his own property. In **T.A. Lakshmi Narasamba v. T. Sundaramma and others**[1], while interpreting the said provisions, this Hon'ble Court was pleased to observe as under:

> "An essential element of the son's right of inheritance from his father is the spiritual benefit which in the contemplation of the Hindu Law the son confers upon the soul of the deceased father. Therefore, the son inheriting the self-acquired property of his father takes that property subject to such moral obligation as are conducive to the spiritual benefit of his father, and that such moral

[1] AIR 1981 Andhra Pradesh 88

obligations become legal obligations as against the son who holds his father's property by inheritance.

We have referred to the leading judgments on the point to have an idea as to the basis on which maintenance is provided to the dependants in Hindu society. So long, as the law was not codified, the society was guided by the principles laid down by the text books on Hindu Law which were given by the 'Rishis' and law-givers. The basic concept that the Hindu family is a homogeneous family consisting of all the members cannot be ignored in this context. It was observed in Sankaramurthy v. Subbamma, (AIR 1938 Mad 914) that Subramania Aiyar, J. expressed the view that when persons are morally bound to provide maintenance testamentary dispositions cannot affect the legal right that accrued for maintenance. To put it in other words, when there is a moral claim, which matures into a legal right after the death of the father-in-law, it cannot be defeated by testamentary disposition or by gift. This is the substance of the view expressed by the learned Judge. The reasoning given in support of this proposition is that the claim to maintenance originates from the status acquired by marriage and when once that status is acquired, it cannot be defeated by any dispositions of the property. Whenever the moral obligation comes to an end, the legal right starts and the liability gets fastened. No doubt in Rangammal v. Echammal ILR (1899) Mad 305 without attempting any analysis or examination, conclusion was arrived at by Subramania Ayyar, J. But Subramania Ayyar, J. referred to in Janki v. Nandram ILR (1899) All 194 to a Full Bench judgment in which law on the subject was exhaustively dealt with and we have already made a reference to that decision. In that (case) Mohmood, J., delivered a separate judgment and dealt with the origin of the right of maintenance under the Hindu Law exhaustively. He referred to various text books on Hindu Law. The learned Judge referred to the earlier judgment in Adhibai v. Cursandas Nathu ILR (1887) 11 Bom 199 and also to Tagore Law Lectures, 1879 to find out as to why maintenance is granted. It is not necessary to repeat the entire precepts and principles under which the maintenance was provided for. It was noted by Mohmood, J., that there was scarcity of case law on the subject due to the devotional character of the Hindu population and probably also to the fact that the law abiding tendencies of the Hindus of the better classes have precluded brothers from disputing the right of unmarried sisters to obtain their marriage expenses out of the paternal estate in the hands of the brothers by inheritance. In fact, there was no distinction between moral obligation and legal obligation under the then prevailing Hindu Law. That is why, the learned Judge noted that when a girl comes into a family by marriage she becomes a member of her husband's family and is maintained by the Head of the family. As there is no codified law keeping the spirit of the Hindu Law-givers, the Courts laid down that the spirit of the law givers has to be carried out and that the dependants cannot be deprived of their maintenance by any devise adopted by the persons. Therefore, so far as the father-in-law is concerned he being an elder member and head of the family it was thought inconceivable that he would not maintain his widowed daughter-in-law. The Courts have held that it ripens into legal obligation in the hands of the heirs. Various reasons have been given for conversion into a legal obligation as against the sons, one such being that it is for the spiritual benefit of the father. The moral obligation on the part of the father-in-law to maintain the widowed daughter-in-law is treated as debt, which if not discharged by providing maintenance to the daughter-in-law the same has to be discharged by the heirs. All these aspects, in our view were before the learned Judge while deciding the case in Rangammal v. Echammal ILR (1899) Mad 305.

There is yet another aspect that needs to be considered. The head of the family in Hindu society whether he possessed of ancestral property or self-acquired property treats himself as the head of the family and provides maintenance to all the dependants. He voluntarily treats himself as the trustee of the property and fulfils his moral obligation to provide maintenance to the dependants. Even in the absence of any property it was considered that there is a moral obligation on him to maintain the dependants out of his own earnings. Even it is so when the property is in the hands of the heirs of the deceased father-in-law. As a natural corollary, when the property is bequeathed by a will or made over by a gift, the person who takes the property would himself step into the shoes of the deceased and shall discharge the obligations attached to the property during the lifetime of the 'karta'. This no doubt appears to be peculiar to the Hindu system. That is the reason why in Foolcomari Das v. Debendra Nath (AIR 1942 Cal 474) even Ameer Ali, J. expressed the view that:

> "If strangers are to be affected the liability must be visualized as something which attaches to the property rather than to the person or capacity of the devisee or donee - something in the nature of charge or implied trust affecting transferees."

Keeping in view the background of the Hindu Society as it existed and also having regard to the fact that there is no difference between a moral obligation and legal obligation in so far as the head of the family is concerned, the only inference that could be drawn is that the property, even if self-acquired, was treated as trust property for maintenance of the family members including the dependants. To put it in other words, the head of the family visualised that there is a charge attached to the property to maintain the family members. If that is so, the transferees are affected by such charge and they would also constitute as trustees to maintain the dependants when the property is in their hands.

We have already expressed our view that ignoring the maintenance claim of the dependants, no head of the family is supposed to transfer the property by way of gift or will to such a stranger, who will have no respect for the wishes of the transferor. This can be the only logical conclusion that could be arrived at keeping in view the background of the Hindu jurisprudence."

Now coming to the present facts of the case, though they are not similar to the facts in the above said case the appellants herein, who are the father-in-law and mother-in-law of the respondent, are morally and legally responsible and bound to maintain the respondents being the head of the family in Hindu society. Whether the 1st appellant possessed of ancestral property or self acquired property treating himself as head of the family should provide maintenance to all the dependents. As stated supra, the 1st appellant not only getting the pension of Rs.2,500/- per month, he is owning a house property comprising of five rooms worth Rs.3,00,000/-. Therefore, this Court finds that there are no illegalities or irregularities in the judgment of the Court below. In these circumstances, there are no merits in the appeal and the same is accordingly dismissed.

Miscellaneous petitions, if any, shall also stand dismissed. No costs.

JUSTICE C.PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

Date: .12.2017.
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