

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3215 of 2014(O&M)

Date of decision : May 16, 2018

Hari Chand and another

..... Appellants

Versus

Vaishakha

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Parminder Singh, Advocate
for the appellants.

Mr. R. S. Mamli, Advocate
for the respondent.

AMIT RAWAL, J (oral).

The present appeal is at the instance of the defendant i.e. maternal grand parents of Vaishakha-respondent against judgment and decree of the lower appellate Court whereby suit under Section 18 of the Hindu Adoption and Maintenance Act, 1956 has been dismissed by the trial court but decreed by the lower appellate court and amount of maintenance of ₹3,000/- per month w.e.f. 20.9.2003 to 15.6.2008 has been ordered.

Learned counsel appearing on behalf of the appellants submitted that judgment and decree of the lower appellate court is not sustainable, for, the real biological mother of Vaishakha namely Shammi Rani had performed second marriage and is living with her second husband. She did not come forward to support the case of the respondent-plaintiff, for, the categoric stand in the written statement was that Vaishakha was

living with step mother and there was no occasion for her to claim maintenance from the grand parents. Non-appearance of the mother cannot be treated to be an adverse inference against respondent-plaintiff. This fact had not been taken into consideration by the lower appellate court. In terms of the compromise entered into by the mother whereby she accepted the entire alimony amount, not at the behest of the mother but for all the members including Vaishakha, thus urges this Court that there is illegality and perversity in the judgment.

Learned counsel appearing on behalf of the respondent submitted that Vaishakha did not stay with the mother as she was staying with the maternal uncles i.e. Mama and Mami. This court, on the last date of hearing directed Vaishakha, who had turned major, to appear before this Court. She has appeared and was identified by the learned counsel Mr. R. S. Mamli. This Court had interaction with her and she stated that she had been staying with her maternal uncles i.e. Mama and Mami.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force or merit, for, non-examination of the mother cannot be said to be fatal to the case of the respondent-plaintiff, for, once this Court had undertaken the task of ascertaining the residence of Vaishakha for which she categorically replied that she had been residing with maternal uncles i.e. Mama and Mami. Since Mama and Mami had their own children and they require extra money to maintain her, cause of action arose for claiming maintenance. As per the aforementioned provisions, the amount of maintenance awarded @ ₹3,000/- per month w.e.f. 20.9.2003 to 15.6.2008 for a period of approximately five years cannot be said to be onerous or on the higher side.

There is no illegality or perversity in the judgment and decree passed by the lower appellate court being the last court of fact and law after appreciation of evidence. The judgment and decree of the trial court is set aside.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018

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Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No