

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 143 of 2004**

Ku. Kajol Masulkar, a minor, D/o L.D. Masulkar, guardian and next friend Smt. Uttara Masulkar, Assistant Teacher, Govt. Junior School, Shakti Nagar, Durg, Tehsil & District Durg, Chhattisgarh.

---- Appellant/Plaintiff No. 1

Versus

1. Shri L.D. Masulkar, S/o Jivatu Masulkar, aged about 38 years, R/o Qtr. No. 1-D, Street No. 36, Sector 6, Bhilai, Tehsil & District Durg, Chhattisgarh.

2. The Managing Director, Bhilai Steel Plant, Bhilai, Teshil & District Durg, Chhattisgarh.

----Defendants No. 1 & 2

3. Smt. Uttara Masulkar, Assistant Teacher, Govt. Junior School Shakti Nagar, Durg, Tehsil & District Durg, Chhattisgarh.

----Plaintiff No. 2

----Respondents

For Appellant/Plaintiff	:	Mr. M.P.S. Bhatia, Advocate
For Respondent/Defendant No. 1	:	Mr. Soumya Rai, Advocate
For Respondent/Defendant No. 2	:	Mr. Aditya Bhardwaj, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28.03.2019

1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

“Whether the first appellate Court was justified in reversing the well reasoned judgment and decree passed by the trial Court on the ground that the appellant is getting Rs. 1,000/- as maintenance from her father and is not entitled for any facilities within the meaning of circular No. 74/87 issued on 19.09.1987 ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before

the trial Court.)

2. Plaintiffs, being the wife and daughter of defendant No. 1, filed a civil suit for declaration of title stating that as they are wife and daughter respectively of defendant No. 1 therefore, they are entitled to education and medical facilities from defendant No. 2 i.e. Bhilai Steel Plant where the defendant No. 1 was working as a Rail Processor in R.T.S. department at that time.
3. Learned trial Court, after appreciating oral and documentary evidences on record, granted the relief in favour of the plaintiffs vide order dated 21/06/2003 in civil suit No. 8-A/02, which was then partly interfered with by the first appellate Court vide order dated 10/12/2003 passed in civil appeal No. 31-A/2003 against which this second appeal has been preferred by the plaintiffs and for which substantial question of law has been framed and set out in the opening paragraph of the judgment.
4. Mr. Bhatia, learned counsel appearing for the appellant/plaintiffs submits that the first appellate Court is absolutely unjustified in setting aside the well reasoned and well merited judgment and decree of the trial Court, which is liable to be set aside.
5. On the other hand, Mr. Rai and Mr. Bhardwaj, learned counsels appearing for respondents/defendants No. 1 & 2 would support the impugned judgment and decree passed by the first appellate Court.
6. I have heard learned counsels for the parties, considered their rival submissions and went through the records with utmost circumspection.
7. The trial Court has clearly held that the plaintiffs No. 1 & 2 are wife and daughter respectively of defendant No. 1, who at that time,

was working with defendant No. 2 i.e. Bhilai Steel Plant as a Rail Processor in R.T.S. department and matrimonial dispute is the reason for dispute between plaintiff No. 1 and defendant No. 1 i.e. the wife and husband respectively, therefore, plaintiffs No. 1 & 2 i.e. wife and daughter of defendant No. 1 are entitled to education and medical facilities which the family members of defendant No. 1/employee of Bhilai Steel Plant is entitled to.

8. The first appellate Court interfered on the ground that the plaintiff No. 2 is getting Rs. 1,000/- per month as maintenance from defendant No. 1 and though, she is a dependant member as per rule, she will not be entitled to education and medical facilities from defendant No. 2 i.e. Bhilai Steel Plant.

9. In my considered opinion, the first appellate Court has clearly held that as per rule 4 applicable to the employee of the Bhilai Steel Plant, plaintiff No. 2 is a dependant family member of the employee/defendant No. 1, but since she is getting Rs. 1,000/- per month as maintenance, she is not entitled to get education and medical facilities from defendant No. 2 i.e. Bhilai Steel Plant. Grant of maintenance of Rs. 1,000/- per month would not take away the right of plaintiff No. 2 i.e. daughter which she is otherwise legally entitled to, from the Bhilai Steel Plant being the dependant family member of defendant No. 1/employee and even otherwise, the amount of Rs. 1,000/- per month cannot be said to be the amount by which her education and medical facilities can be fulfilled. Therefore, the first appellate Court is absolutely unjustified in partly reversing the judgment and decree of the trial Court. As such, the judgment and decree of the first appellate Court is set aside and that of the trial Court is restored.

10. In view of the aforesaid discussion, the judgment and decree

passed by the first appellate Court is liable to be and is hereby set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently allowed and the plaintiffs' suit stands decreed. No cost(s).

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet