

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

SECOND APPEAL NO. 448 OF 2012
WITH CA/7567/2012 IN SA/448/2012

Anandrao S/o Madhavrao Landge,
 age 47 years occup.service as Teacher
 R/o Mandni Taluka Naigaon (Kh.) Dist.
 Nanded

...Appellant
 (Orig.Deft.No.1)

Versus

1 Rukhminibai W/o Anandrao Landge,
 age 37 years occup. household
 R/o mandni, Naigaon (Kh) Dist.
 Nanded (Orig. plaintiff)

2 Madhavrao S/o Dattaram Landge, age
 69 yers occup. agriculture R/o Mandni
 Tal. Naigaon (Kh.) Dist. Nanded (Orig. Deft.No.2)

...Respondents

WITH
CIVIL APPLICATION No. 2884 of 2012
IN SAST/2273/2012

Rukhminiai W/o Anandrao Landge,
 age 42 years occup. household
 R/o mandni, Naigaon (Bz.) at present
 Nilegaon Taluka Naigaon Dist. Nanded

...Applicant
 (Orig.plaintiff)

Versus

1 Anandrao S/o Madhavrao Landge,
 age 47 years occup.service as Teacher
 R/o Mandni Taluka Naigaon (Kh.)
 Dist. Nanded

2 Madhavrao S/o Dattaram Landge,
 age 70 yeras occup. agriculture
 R/o Mandni Tal. Naigaon (Khairgaon)
 Dist. Nanded

...Respondents
 (Orig.defendants)

Mr. U.B. Bilolikar, Advocate for appellant in S.A. No. 448/2012 and respondents in Civil Appln. No. 2884/2012.

Mr. G.S. Chincholokar, Advocate for Respt. No.1 in S.A. No. 448/2012 and applicant in C.A. No. 2884/2012.

CORAM : AVINASH G. GHAROTE, J.

Date : 30th September, 2019

ORAL JUDGMENT:

1. Heard learned Counsel Mr. Bilolikar for the appellant-husband/defendant No.1 and learned Counsel Mr. Chincholokar for the respondent-wife/plaintiff.

2. Respondent No. 2 Madhavrao is father of appellant Anandrao/defendant No.1, who is formal party in the present matter. Respondent No.1-wife/plaintiff had filed a suit bearing Special Civil Suit No. 3 of 2002 against her husband/present appellant for getting maintenance allowance of Rs. 3000/- per month and past maintenance allowance for three years i.e. 30/01/1999 to 30/01/2002 at the same rate and to keep charge on the joint family property of original defendants No.1 & 2 alongwith claim for perpetual injunction.

3. For the sake of convenience, the parties are being referred to as they were before the Trial Court.

4. The contention of the respondent No.1/plaintiff-wife in

the suit is that she is the legally wedded wife of defendant No.1/appellant and their marriage was solemnized about 18 years back before 2002, when the suit was filed on account of alleged claim of illtreatment. The plaintiff claims to have been driven out of the house since about 9½ years prior to filing of the suit and since then she was residing with her parents. The plaintiff, thus, claims on the basis of serious allegations made in the plaint an amount of Rs. 3000/- per month as maintenance. The learned Trial Court by its reasoned judgment and decree dated 21/02/2007 partly decreed the suit and granted maintenance of Rs. 1500/- per month to the plaintiff. The learned Trial Court further passed a decree for arrears of maintenance from 30/01/1999 to 30/01/2002 subject to the condition that any amount paid during the period would be deducted from whatever was payable to the plaintiff. Prayer of the plaintiff for creation of charge on the suit lands was rejected, however, a charge of arrears of maintenance was kept on his salary and other movables, if any, of defendant No.1.

5. The plaintiff/wife being aggrieved by the judgment and decree of the Trial Court dated 21/02/2007 filed Reg. Civil Appeal No. 8 of 2008, wherein considering the fact that the defendants own about 12 acres of irrigated land, defendant No.1 was serving as a Teacher and was getting monthly salary of more

than Rs. 6000/- and further fact of promotion of defendant No.1 as Head Master of the school at village Khairgaon, the quantum of monthly maintenance payable to the plaintiff was increased from Rs. 1500/- as granted by the Trial Court to Rs. 2500/- per month from the date of filing of the appeal and rest of the judgment and decree passed by the learned Trial Court is confirmed. The husband/original defendant No.1 being aggrieved by the judgment and decree dated 10/10/2011 has filed the present second appeal.

6. Learned Counsel Mr. Bilolikar appearing for the appellant/defendant No.1 has vehemently opposed the judgments and decrees as passed by the Courts below. He has argued that the same are without consideration of the material on record and without any merits whatsoever and are liable to be set aside. He further urged that the Courts below have not appreciated the evidence led before it in its proper perspective and, therefore, the impugned judgments are not sustainable in law.

7. Learned Counsel Mr. Chincholikar appearing for respondent No.1/plaintiff-wife, however, has supported the impugned judgments and decree and stated that they are well reasoned and appropriate considering the material placed on record by the plaintiff.

8. Having heard the learned Counsel for the parties, it is an admitted position that respondent No.1/plaintiff is the wife of appellant/defendant No.1. It is also an admitted position that they had been living separately since 9½ years prior to filing of the suit. It is further an admitted position that under the law respondent No.1/wife would be entitled to maintenance. The only issue is about increase in the quantum of maintenance, as granted by the first Appellate Court of Rs. 2500/- per month, as against an amount of Rs. 1500/-, granted by the Trial Court. It is an admitted position that the family of respondent No.1 holds irrigated land, which derives income. It is further an admitted position that appellant/husband is serving as Head Master in the school at village Khairgaon and is presently earning sumptuously. Considering this position, the enhancement of monthly maintenance by the first Appellate Court to Rs. 2500/- per month, is clearly justified and, therefore, I do not see any substantial question of law in the present appeal. The same, therefore, is dismissed, with no order as to costs.

9. The judgment of the first Appellate Court enhancing monthly maintenance dated 10/10/2011 has been separately challenged by plaintiff-wife by a separate Second Appeal bearing (Stamp) No. 2273/2012, in which Civil Application No. 2884/2012 is filed for condonation of delay of five days. Mr. Bilolikar as well

as Mr. Chincholikar both agreed that the delay needs to be condoned. It is accordingly condoned.

10. Learned Counsel Mr Bilolokar also waives notice in the second appeal on behalf of defendant No.1-husband. The same is duly recorded.

11. Both the learned Counsel have expressed their willingness to address the Court on this Second Appeal as filed by the original plaintiff-wife, as the facts are similar and any postponement of consideration would amount to waste of time, according to them. The matter is, therefore, taken up for hearing. The present appellant/wife, in her Second Appeal, challenges the judgment and decree dated 10/10/2011 to the extent that the first Appellate Court has granted maintenance to the plaintiff-wife of Rs. 2500/- per month, instead of Rs. 3000/-, as claimed.

12. Having heard the learned Counsel for the parties, who are put to notice and who have consented considering the fact that present appeal arises out of the judgments and decree passed in the year 2007 by the Trial Court and in the year 2011 by the Appellate Court, to work out the matter. The present appeal raises a substantial question of law as under :

Whether the impugned judgment and decree of the first Appellate Court is vitiated for non-consideration of relevant facts and are not based on the material available on record ?

13. Thus, having framed the substantial question of law, learned Counsel Mr. Bilolikar and Mr. Chincholikar appearing for the contesting parties, have agreed to address the Court on the substantial question of law framed.

14. Learned Counsel Mr. Chincholokar argued that considering the factual position, evidence which has been led, has been ignored by the Appellate Court inasmuch as affluence of the respondent/husband is writ large on record alongwith admitted position that he is serving as Head Master in the school at village Khairgaon and, thus, the first Appellate Court ought to have allowed the appeal and granted maintenance of Rs. 3000/- per month.

15. Mr. Bilolikar, learned Counsel for defendant No.1- husband opposes this proposition and contends that the first Appellate Court has properly appreciated the evidence and material on record and, therefore, the impugned judgment and decree passed by the first Appellate Court needs to be sustained.

16. Having considered the rival submissions and considering the fact that the family of the husband has substantial irrigated land as well as the position of defendant No.1/husband that he is serving as Head Master in the school at

village Khairgaon, the amount of Rs. 3000/- per month as maintenance clearly appears to be reasonable and proper. The appeal to this extent is allowed. As such, the Judgment and decree passed by the Trial Court and the first Appellate Court is modified as under :

"Defendant No.1/husband is hereby directed to pay maintenance at the rate of Rs. 3000/- (Rs. three thousand only) per month to the plaintiff/wife from the date of the judgment and decree in appeal, without prejudice to any other proceedings, which the plaintiff-wife may have raised for any claim made by her as against defendant No.1-husband, which in law she would be entitled to."

17. Considering the nature of the matter, there will be no order as to costs.

18. In view of disposal of both the Second Appeals, Civil Applications pending therein, if any, shall stand disposed of.

(AVINASH G. GHAROTE, J.)

Madkar