

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***SECOND APPEAL NO.739 OF 2016
WITH
CIVIL APPLICATION NO.1464 OF 2016***

Pandurang Shripati Yadav ... Appellant
Vs
Anandi Pandurang Yadav and ANR. ... Respondents

...
Mr. Chetan G. Patil for the Appellant.
Mr. S.V.Sadavarte for the Respondent Nos.1 and 2.

***CORAM : SANDEEP K. SHINDE J.
DATE : 26 MARCH, 2019***

P.C. :

Heard learned counsel for the parties.

2 Against the decree of maintenance passed under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 ('Act' for short), the defendant has preferred this appeal. I will refer the parties as per their status in the suit.

3 The suit for maintenance was decreed by the learned trial Court and directed the defendant to pay monthly maintenance at the rate of Rs.4,000/- to the plaintiff from the date of the suit and Rs.2,500/- to the plaintiff no.2 till her marriage which was held on

23rd July, 2011. The defendant was directed to pay arrears of maintenance Rs.2,34,000/- and the charge was created on the land of the defendant bearing Gat Nos.198, 199, 334, 335 and 102. This decree was challenged in the Regular Civil Appeal No.58 of 2012. However, it met with the same fate. It is against the decree passed in Regular Civil Appeal, the defendant has preferred this Second Appeal.

4 General rule is that this Court will not interfere with the concurrent findings of the Courts below but it is not an absolute rule. Some of the well-recognised exceptions are:

- (i) Where the Courts below have ignored material evidence or have acted on no evidence;
- (ii) Courts below have drawn wrong inference from the proved facts by applying the law erroneously;
- (iii) Courts below have wrongly cast burden of proof.

. Case in hand does not fall under either of the exceptions.

5 I have perused the evidence. In cross-examination the defendant admitted that he performed the second marriage with the

plaintiff while his first marriage was subsisting and also stated that since from the first marriage, issues were not born, he performed the second marriage with the plaintiff.

5 The learned counsel for the appellant would submit that Courts below have ignored the evidence on record and, therefore, findings are perverse.

6 The learned counsel to substantiate his submission, has taken me through the evidence of the plaintiff. He submitted that the plaintiff willingly married the defendant knowing fully well that his first marriage was subsisting. It is submitted that there is no evidence to establish and/or to infer, that the defendant neglected to maintain his wife and there was no justification for withdrawing herself from the company of the defendant-husband. It is submitted that the Courts below have also not taken into consideration the fact that the plaintiff has inherited share in her father's property which is capable of yielding income.

7 I have gone through the evidence and the judgments of the Courts below. It transpires from record that in the year 1990, the

plaintiff had filed an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 but the same was withdrawn, may be for the reason that disputes and differences were settled between the parties. However, Courts below have recorded the finding of fact that during the subsistence of her marriage, defendant performed another marriage with one Vijaya and out of the said wed-lock, five issues were born after 1973. In view of this fact, Courts below have held that this circumstance was sufficient for withdrawing from the company of husband. I have no reason to differ with this finding which is consistent with the evidence on record.

8 Though it is submitted that the plaintiff has inherited share in the property of her father which is capable of yielding income, but the fact remains that no evidence was brought on record to substantiate actual income earned and accrued to the plaintiff therefrom. On the other hand, the defendant in his evidence admitted that he takes sugar-cane crop and income therefrom is Rs.4

Lakhs p.a. Thus, the trial Court has rightly granted maintenance at the rate of Rs.4,000/- to the plaintiff-wife and Rs.2,500/- to the plaintiff no.2-Daughter which is payable by him till her marriage.

9 Considering facts of the case and the evidence on record, in my view, Courts below have taken into consideration provisions of Sections 23(2) of the said Act while granting decree of maintenance.

10 Appeal does not give rise to any substantial question of law. Appeal is, therefore, dismissed. The Civil Application is disposed of.

(SANDEEP K. SHINDE, J.)