

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2136-2017 (O&M)

Date of Decision: 30.04.2019

BAHADUR SINGH

...Appellant

VS.

GURMAIL KAUR

....Respondent

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**
 HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Lakhwinder Singh, Advocate
 for Mr. P.S. Dhaliwal, Advocate,
 for the appellant.

RAKESH KUMAR JAIN (J.)

This appeal has arisen from the judgment and decree dated 02.08.2016 passed by the Family Court, Barnala by which suit filed by respondent-wife under Order 33 Rule 1 and 2 of the CPC has been partly decreed for recovery of maintenance allowance @ ₹6,000/- per month from the date of filing of the suit i.e. 10.04.2007 by creating the charge over the suit property, after adjusting the said amount of sale consideration of ₹4,16,000/- plus ₹70,000/- equal to ₹4,86,000/- already received by the respondent from the appellant and also restraining the appellant from alienating the suit property in any manner.

In brief, the respondent herein filed a suit under Order 33 Rule 1 and 2 of the CPC as an indigent person for recovery of maintenance from the appellant-husband for herself and her daughter. The marriage of appellant was solemnized with the respondent in the year 1976 as per Hindu Rites by way of Anand Karaj. They were blessed with a daughter on 10.07.1977 later on named as Bhuro @ Rajvinder Kaur whose marriage was solemnized in the

year 1995 with one Lakhbir Singh son of Jarnail Singh resident of Amla Singh Wala.

The respondent has alleged that the appellant had been treating her with cruelty as he had always desired a son and she was thrown out from her maternal house about seven years back from the date of filing of the suit. He had performed second marriage with one Gurpreet Kaur daughter of Leela Singh resident of Ubhawal without seeking divorce from her. It is further alleged that the respondent is living separately in the same village and has no source of income or immovable property to maintain herself. It is also alleged that she has brought Veer Pal Kaur, minor daughter of her daughter for her company and is bearing her expenses as she is studying in 7th standard in the same village on which she has been incurring an amount of ₹7,500/- per month. It is further alleged that the appellant is the owner of the agricultural land from which he is earning not less than ₹1,00,000/- per annum besides this the appellant is also engaged in property dealing business from which he is earning ₹1,00,000/- per annum and therefore, being in sound financial position to pay ₹10,000/- per month as maintenance.

It is further averred that the appellant, with malafide intention, in order to deprive the respondent and her daughter, has executed the transfer deed of ownership of the property in favour of Thakar Singh, minor son from the second wife Gurpreet Kaur in respect of 95 kanals of land vide vasika No. 822 dated 05.05.2005 registered in the office of Sub Registrar, Barnala.

The appellant, while defending the suit, has not denied that he has not obtained a decree of divorce from the respondent rather it is alleged that he has brought Gurpreet Kaur daughter of Leela Singh resident of

Village Ubhawal with the consent of respondent who is living with him as second wife. It is also averred that he had transferred 12.0 Marlas of land situated in Village Sanghera to the respondent vide registered deed No. 4065 dated 12.02.1997 in lieu of maintenance regarding which memorandum of agreement dated 12.02.1997 was scribed. It is further averred that the respondent has sold the said land to one Davinder Singh son of Sarwan Singh for ₹4,16,000/- vide registered sale deed dated 26.04.2004. He had also given one house for the residential purposes but the same has also been sold by her to one Saudagar Singh Son of Bachan Singh for a sum of ₹28,000/- per biswa vide agreement dated 18.06.2004. It is, thus, alleged by him that in view of the aforesaid circumstances, the respondent is not entitled for any maintenance allowance.

On the pleadings of the parties, learned family Court has framed as many as five issues in which issues No. 1 and 2 to be proved by the respondent and issues No. 3 and 4 by the appellant herein for which they both have led oral as well as documentary evidence. Learned family Court has discussed issues No. 1 to 4 together and rejected the prayer of the respondent-wife to sue her as an indigent person vide its order dated 22.02.2014 and thereafter respondent made good the deficiency of Court fee on 23.05.2014 and suit was registered as such. The Court has found that the value of the property alleged to have been given by the appellant to the respondent was not sufficient enough to wriggle out of his liability to maintain his legally wedded wife as the said amount can be adjusted to the amount of maintenance to be allowed. Learned family Court has also found that an amount of ₹10,000/- per month is on the higher side and awarded ₹6,000/-

per month for the purpose of maintenance to the respondent who is still a legally wedded wife of the appellant.

Learned counsel for the appellant has submitted that once the matter was settled between the parties on 12.02.2017, the appellant cannot be burdened with the amount of maintenance thereafter.

We have heard learned counsel for the appellant and perused the record with his able assistance.

As per Section 18 of the Hindu Marriage Act, 1955 (for short “the Act”), the Hindu wife is entitled to be maintained by her husband during her lifetime and she is entitled to live separately from her husband without forfeiting her claim for maintenance if the husband keeps any other wife living.

There is no dispute that the appellant is having second wife namely; Gurpreet Kaur during the subsistence of his marriage with the respondent who has not lost the status of his legally wedded wife. Although the case of the appellant is that the respondent-wife had already recovered ₹4,86,000/- out of the agricultural land and the house transferred to her by him in the year 1997 and therefore, she is not entitled to any sort of maintenance from the appellant but Section 18 of the Act provides that the Hindu wife is entitled to be maintained by her husband during her lifetime. Proceeding on the said premise, learned family Court had ordered that the appellant to pay ₹6,000/- per month to the respondent-wife as maintenance from the date of filing of the suit and the amount which the respondent had already recovered by sale of the said properties which comes to ₹4,86,000/- shall be adjusted from the amount of maintenance which would accrue as

arrears w.e.f. 10.04.2007 in which we do not find any error for the purpose of interference and thus, the present appeal is hereby dismissed though without any order as to costs.

[RAKESH KUMAR JAIN]
JUDGE

April 30, 2019
Ess Kay

[ANUPINDER SINGH GREWAL]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No