

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.599 OF 2013

WITH

CIVIL APPLICATION NO.10687 OF 2013

SHRIRANG RAMBHAU GARAD

VERSUS

GANDHARIBAI W/O SHRIRANG GARAD AND OTHERS

...

Mr. A.V. Lavte, Advocate h/f Mr. S.J. Salunke, Advocate for the appellant

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th SEPTEMBER, 2021

ORDER :

1 Present appellant is the original defendant No.1, who is challenging the Judgment and Decree passed by both the Courts below. Present defendant No.1 is the original plaintiff, who had filed Regular Civil Suit No.36/2008 for maintenance under Section 18 of the Hindu Adoption and Maintenance Act. The said suit was filed before Second Joint Civil Judge Junior Division, Beed. The said suit came to be allowed. Defendant No.1 was directed to pay maintenance @ Rs.3,000/- per month from the date of the suit i.e. 25.01.2008. The charge of maintenance was kept on the land

Gat No.244, 250, 257 and House Nos.46 and 52. The present defendant No.1 filed Regular Civil Appeal No.158/2010 before District Court, Beed. The appeal was heard by learned District Judge-1, Beed and it was partly allowed. The maintenance amount was reduced and the defendant No.1 was directed to pay maintenance @ Rs.2,700/- per month from the date of the suit. The order of keeping charge on the properties of the defendant No.1 passed by the learned Trial Judge was confirmed. Hence, this Second Appeal.

2 Heard learned Advocate Mr. A.V. Lavte holding for learned Advocate Mr. S.J. Salunke for the appellant. In order to cut short, it can be said that he has argued in support of his contentions.

3 At the outset, it is to be noted that the relationship between the parties is not denied. Defendant No.1 and plaintiff are the husband and wife. Their marriage had taken place about 43 years prior to the suit. Defendant No.1 is admittedly the owner of agricultural land Gat Nos.244, 250, 257 situated at village Pargaon Shiras and he has two houses; House No.46 and House No.52 in the same village. Plaintiff contended that during the cohabitation with defendant No.1 for about 7-8 years, she had begotten daughter by name Sagarbai. Now that daughter is married. According to the plaintiff, after some period, the defendant No.1 used to beat her and gave her mental as well as physical ill-treatment and driven out of the house.

Thereafter, he performed second marriage in the year 1973 with a lady by name Seetabai and defendant Nos.2 and 3 are the sons begotten to defendant No.1 and Seetabai and there are four daughters to them. Plaintiff had filed Criminal Miscellaneous Application No.37/1981 for maintenance and initially it was granted @ Rs.100/- per month. Thereafter, it has been enhanced lastly to Rs.300/-. She contended that since she has no source of income and now she is unable to maintain herself, maintenance be granted to her.

4 According to the defendants, when plaintiff refused to cohabit with defendant No.1, there was customary divorce between them and then the defendant No.1 performed marriage with Seetabai. Further, defendant No.1 had come with a case that the agricultural lands are partitioned between the defendant Nos.1 to 3.

5 It is to be noted that from the evidence, that is adduced, it can be seen that the defendant No.1 has failed to prove that he had obtained customary divorce. This fact has been decided by two Courts, that is, the Court which was dealing with the application under Section 125 of the Code of Criminal Procedure, 1973 and also the present Trial Court. It need not be elaborated once again. Further, when the defendant No.1 himself is admitting that he had performed second marriage and he is admitting that defendant Nos.2 and 3 are sons, now, there is reasonable cause/reason

available to the plaintiff to stay away from the defendant No.1. Since the relationship between the plaintiff and the defendant No.1 as husband and wife is still existing, it is the duty of the defendant No.1 to maintain plaintiff. The learned Trial Court had granted maintenance @ Rs.3,000/- per month. The First Appellate Court found that the amount, that has been granted by the Criminal Court under Section 125 of the Code of Criminal Procedure, was not considered by the Trial Court and, therefore, that amount has been made less and the defendant No.1 has been directed to pay maintenance @ Rs.2,700/- per month. In fact, it can be still said that the said amount appears to be meagre, if a person has to survive in present day. Yet, when the respondent has not challenged the said Judgment and Decree, we cannot go into that aspect. However, as regards the present appeal is concerned, the appellant has failed to show any substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure, 1908. Therefore, the Second Appeal stands dismissed. Pending Civil Application No.10687 of 2013 stands disposed of.

(Smt. Vibha Kankanwadi, J.)