

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.353 OF 2021

Sindhubai w/o Ramkisan Jayabhaye = **APPELLANT**
(Orig.Plaintiff)

VERSUS

1. Ramkisan @ Ramkrushna
s/o Maruti Jayebhaye & Ors. = **RESPONDENTS**
(Orig.Defendants)

Mr.SS Gangakhedkar, Advocate for Appellant;

Mr.NK Kakade, Advocate for Respondent Nos.1 to 6.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 11th October, 2021.

PER COURT :-

1. Present appeal has been filed by original plaintiff to challenge judgment and decree passed in Regular Civil Appeal No.148/2009 by learned District Judge-2, Beed, thereby the appeal filed by present respondents came to be allowed on 15.3.2013. Present plaintiff had filed Special Civil Suit No.36/2008 before 2nd Joint Civil Judge, Senior Division, Beed, for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956(hereinafter referred to as the said Act). It came to be allowed and deft.no.1, i.e. husband, was directed to pay maintenance @ Rs.3,000/- per

(2)

month from the date of the application. Charge of the maintenance was directed to be kept on the share of deft.no.1 on the property. That suit came to be decreed on 9.9.2009 and as aforesaid, the appellate court had set aside the judgment and decree and thereby the suit was dismissed. Hence, this Second Appeal.

2. Heard learned Advocate appearing for the respective parties.

3. It was vehemently submitted on behalf of the appellant that the first Appellate Court has taken a perverse view. The learned first Appellate Court impressed itself with the previous proceeding of divorce, which had attained finality in CRA No. 1103/1997, vide order dated 16.12.2011. The learned First Appellate Court denied the status of the parties as husband and wife and it was against the record. The Trial Court had taken a prefect view. In fact, the plaintiff was also of advanced age and she was unable to maintain herself. When the suit was filed, at that time, deft.No.1 was serving. The other defendants are family members,

(3)

who are also having specific source of income. Under such circumstance, substantial questions of law are arising in this case, requiring admission of the Second Appeal.

4. Per contra, learned Advocate appearing for the respondents, supported the reasons given by the first Appellate Court and submitted that the plaintiff, being a divorced wife, was not entitled to get maintenance under Section 18 of the said Act. No substantial questions of law are arising in this case.

5. At the outset, it is to be noted that the marriage between the plaintiff and deft.no.1 was stated to have taken place 40 years prior to the suit, i.e. prior to 2008 and they were residing separately since last about 36 years prior to the suit. The plaintiff says that deft.No.1 has taken exparte divorce decree without her knowledge and that is not binding upon her. She came to know about it later on. However, she is still living as wife of deft.No.1. She was doing labour work and earning. However, after deft.no.1 got service, he

(4)

performed second marriage. Deft.Nos.2 to 6 are children of deft.No.1 begotten from his second wife.

6. The contents of the plaint would depict that intentionally the things have been kept in vague by the plaintiff. She has not stated as to when she came to know about the decree of divorce passed against her and she has not explained as to what steps she had taken to challenge that decree. Though it was stated by the learned Trial Judge that the document of divorce has not been produced by both the parties; yet the fact has been pleaded. Reference of all the other facts can be seen from the judgment of the first Appellate Court, which have not been taken into consideration by the Trial Court. Suggestions were put to the plaintiff that in HMP No.11/1993 divorce decree was passed on 29.3.1994. Copy of the order passed by this Court in Civil Revision Application No.1103/1997 was filed and in that order, this Court had made reference to the decree of divorce passed in HMP No.11/1993. Therefore, it was specifically asked by this Court also to the learned Advocate for the

(5)

appellant as to whether the plaintiff is still a legally wedded wife of deft.No.1 or is a divorcee ? He submitted that he cannot go away from the record that is produced thereby he was accepting that there was a divorce and that order appears to have achieved finality. Now, we cannot go into the aspect as to whether that decree for divorce was obtained exparte by keeping the plaintiff in dark ? Unless she gets the said decree set aside, that decree would be binding on her.

7. The second question would be then arising as to whether a divorced wife can claim maintenance under Section 18 of the said Act ? The learned first Appellate Court has relied on a decision in the case of Smt. Chand Dhawan Vs. Jawaharlal Dhawan - 1993 Cri.L.J. 2930 and taking into consideration the observations therein, it has been concluded that, a divorced wife cannot claim maintenance under Section 18 of the said Act and, therefore, the decree passed by the learned Trial Judge deserves to be set aside.

8. It is to be noted that this Court in

Panditrao Chimaji Kalure Vs. Gayabai Panditrao Kalure – AIR 2001 Bom. 445, after taking note of the decision in the case of Smt. Chand Dhawan (supra), held that, Section 18 of the Hindu Adoption and Maintenance Act, operates in different level and the marriage has to be subsisting and in that case, the marriage was subsisting. In any event in view of the Judgment of the Hon'ble Apex Court in Chand Dhawan, there is absolutely no ambiguity. There is no question of interchangeability, same cannot be permitted so as to destroy the distinction on the subject of maintenance. Therefore, once a wife is divorced, her remedy to seek maintenance is at the time of divorce in a matrimonial petition or subsequent thereto is only under Hindu Marriage Act, 1955 and she cannot have any recourse under the Hindu Adoption and Maintenance Act, 1956, in as much as, the precondition for application of Hindu Adoption and Maintenance Act, 1956 for a wife to seek maintenance is that the marriage must be subsisting. Therefore, when this Court, relying upon the decision in the case of Smt. Chand Dhawan (supra), decided by the Hon'ble Apex Court, has

(7)

abundantly clarified the legal position and the same has been accepted and followed by the first Appellate court, there is absolutely no perversity. The First Appellate Court was justified in holding that the decision by the Trial Court is against the provisions of law, which has been interpreted in Smt. Chand Dhawan (supra)and, therefore, it has been rightly set aside.

9. No substantial questions of law, as contemplated under Section 100 of CPC are arising in this case, requiring admission of the Second Appeal. The Second Appeal deserves to be dismissed and it is accordingly dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV