

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 SECOND APPEAL NO. 283 OF 2019
WITH CA/2539/2019 IN SA/283/2019

Omprakash S/o Laxmanrao Dalvi,
Age: 51 years, Occ. Agriculture,
R/o Babulgaon (Dalvi)
Tq. & Dist Parbhani.

.... **APPELLANT**
(Original Defendant)

VERSUS

Taramati w/O Laxman Dalvi,
Age: 74 years, Occ. Nil,
R/o: Babulgaon, Tq. & Dist. Parbhani,
At present : Pimpalgaon Thombare,
Khanapur, Tq. & Dist. Parbhani.

... **RESPONDENT**
(Original Plaintiff)

...

Mr. Sudhir K. Chavan, Advocate for Appellant
Mr. Kuldeep Patil h/f Mr. S.S. Chaudhary Advocate for Respondent

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CORAM : ANIL S. KILOR, J.

DATE : 24th MARCH, 2021

ORAL ORDER :-

The appellant herein, who is the original defendant, challenges the Judgment and decree dated 1st August, 2018 passed by the Principal District Judge at Parbhani, in Regular Civil Appeal No. 4 of 2011, upholding the Judgment and decree passed by the Civil Judge, Senior Division, Parbhani in Special Civil Suit No. 59 of 2009, decreeing the suit granting thereby maintenance to the plaintiff under Section 22(2) of the Hindu Adoption and Maintenance Act, 1956 (for short " Act of 1956")

2. Brief facts of the present case are as follows : (The parties are referred as per their status).

It is the case of the plaintiff that she is the widow of Laxman Dalvi, who expired in the year 1975, who owned and possessed land Gut Nos. 209, 233, 236 and 237 of village Babhulgaon, Taluka and District Parbhani, which is the suit property. The suit property was ancestral and co-parcenary property of deceased Laxman. There was partition between Laxman and his brother Rustum, in which husband of the plaintiff has received separate share. The plaintiff and deceased Laxman were issue-less and after death of Laxman, plaintiff become absolute owner of the entire property of her husband.

It is the further case of the plaintiff that, defendant is a son of Rustum i.e. real brother of deceased Laxman, who is obstructing and interfering in the peaceful possession and enjoyment of the plaintiff over the suit property. Therefore, she filed Special Civil Suit No. 220 of 1996 for perpetual injunction and declaration. But, the said suit was dismissed. Appeal against said dismissal of the suit was also dismissed on 11-02-2002 on the point of limitation. It is further pleaded by the plaintiff that thereafter defendant forcibly dispossessed the plaintiff from the suit property and also drove her out of the house and threatened her to kill. Not only that but the defendant had driven her out of the village, therefore, she was required to take shelter at her

matrimonial house at Pimplagaon. The plaintiff, thereafter, filed Special Civil Suit No. 61 of 2007 for recovery of possession, but the same was dismissed on 29-12-2008. The appeal preferred against the said decision was also dismissed on 04-10-2020.

The application under Section 125 of the Code of Criminal Procedure against defendant was also dismissed. According to plaintiff, as she has no source of income and there is nobody to maintain her because her age she is not able to do any work to earn livelihood, she filed suit for maintenance under Sections 21(iii), 22(2) and 23 and 27 of the Act of 1956.

3. The defendant appeared in the said suit. Admitted the fact that the plaintiff is the widow of Laxman Dalvi, who owned and possessed the suit properties. However, the defendant came up with a case that as the plaintiff and Laxman were issue-less, they decided to adopt the defendant as their son and accordingly they adopted the defendant.

It is the case of the defendant that on adoption he become absolute owner and possessor of the suit properties, and accordingly, mutation entries were carried out in the name of the defendant. It is the further case of the defendant that plaintiff received Gut Nos. 177 and 265 in partition between the plaintiff and the defendant and because she sold out her share, plaintiff has no right to claim maintenance under Section 22(2) of the Act of 1956.

4. Plaintiff has examined himself by way of affidavit at Exhibit-15. The defendant has examined himself by way of affidavit at Exhibit-24 and two more witnesses and closed his evidence.

5. The learned trial Court after scrutinizing the documentary as well as oral evidence brought on record by both the parties and after considering the legal contentions raised by both the parties, decreed the suit and granted maintenance to the plaintiff to be paid by the defendant @ Rs.3000/- per month from the date of suit for her life time. Learned trial Court has also granted past maintenance at the rate of Rs.1500/- for 36 months i.e. amounting to Rs.54,000/- along with costs of the suit vide Judgment and decree dated 04-12-2010.

6. The defendant feeling aggrieved by Judgment and decree dated 04-12-2010, he went in appeal by filing Regular Civil Appeal No. 4 of 2011 before the Principal District Judge, at Parbhani. Learned lower Appellate Court dismissed the appeal and modified the amount of maintenance by granting Rs. 5000/- per month from 05-12-2020 vide Judgment and order dated 01-08-2018. The aforesaid Judgment and decree dated 01-08-2018 is assailed in the present appeal at the behest of the defendant.

7. The learned counsel for the appellant submits that his case that he is an adopted son and, therefore, after death of Laxman, he become absolute owner of the suit properties, is not

accepted by the plaintiff, therefore, he is not liable to pay any amount towards maintenance as claimed by the plaintiff.

8. It is submitted that plaintiff has received two properties in partition executed between the plaintiff and the defendant and therefore as per Section 22 of the Act of 1956, the plaintiff is not entitled for maintenance. For this purpose, he has relied upon the Judgment of the Honourable Supreme Court in the case of *Pentakota Satyanarayan and others Vs. Pentakota Sheetharatnam and others*¹.

9. He, lastly, in alternative argued that he is ready to pay maintenance to the plaintiff, however, this Court may observe and declare that the defendant is an adopted son of the plaintiff and her husband Laxman.

10. Per contra, learned counsel appearing for the plaintiff-respondent herein supports Judgment and decree passed by both the Courts below and prays for dismissal of this appeal.

11. Considering the rival contentions of the parties, I have gone through the record and perused the Judgments of both the Courts below.

12. From the record, following facts emerges as undisputed facts -

(i) *Plaintiff is the widow of deceased Laxman Dalvi.*

¹ (2005) 8 Supreme Court cases 67

- (ii) Laxman Dalvi and Rustum Dalvi were real brothers.*
- (iii) The defendant is a son of Rustum.*
- (iv) There was partition between Laxman and Rustum.*
- (v) Laxman and plaintiff were issue-less.*
- (vi) Presently all suit properties are in possession of the defendant, who claimed to be an adopted son of deceased Laxman and the plaintiff.*
- (vii) The plaintiff is not staying in her husband's house, but she is staying at her matrimonial house.*

13. Since in view of aforesaid undisputed facts, the plaintiff has proved that the suit properties are not in her possession and she is not getting any income out of it and she has no source of income to earn her livelihood.

14. In the light of the above referred undisputed facts, if pleadings of the defendant are considered, he made categorically statement that he is an adopted son of the plaintiff and Laxman and in that capacity enjoying the suit properties. It is not the case of defendant that, being adopted son he is maintaining plaintiff or she is residing with him. On the contrary, he opposes grant of maintenance on the ground that because plaintiff is not accepting him as an adopted son and as she received Gut Nos. 177 and 265 in partition in her share, which she has sold out, therefore, she is not entitled for any maintenance.

15. In the aforesaid backdrop, provisions of Section 22(2) of the Act of 1956 is necessary to refer at this juncture, which is reproduced below :

22. Maintenance of dependents. —

(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependent has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependent shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

16. It is the requirement of sub-section (2) of Section 22 of the Act of 1956 that where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

17. In the present matter, though the defendant has come with a case that there was a partition of the suit properties and other properties between the defendant and plaintiffs in which plaintiff has received Gut No. 177 and 265, as per the provisions of sub-section (2) of Section 22, she is not entitled for maintenance.

18. However, on perusal of the record, it is revealed that the fact of partition and fact of receiving share in the estate of deceased Laxman has not been proved by the defendant though pleaded and thereby the defendant has failed to establish that, sub-section (2) of Section 22 Will not apply to the present case.

19. The facts in the case of *Pentakota Satyanarayan (Supra)* and the facts of the present case are distinguishable. In the said case, Will was proved and it was held to be true and genuine document by the Courts upto the Apex Court and first wife of Pentakota had got some properties under said Will and in that view of the matter, the Apex Court has held under Section 22(2) of the Act of 1956, she is not entitled for any maintenance.

20. In the present matter, as observed hereinabove that the defendant has not proved and established the partition between plaintiff and defendant. It has also not been proved that in the said partition plaintiff has received some properties and in view of partition, the defendant is enjoying suit properties as an absolute owner. In the circumstance, the Judgment in the case of *Pentakota*

Satyanaraayana (Supra) is of no help to the appellant in the present case.

21. The admission given by plaintiff that she sold some portion of land out of Gut No.177 and 265 is not sufficient to accept the case of the defendant that plaintiff received suit property in her share in partition between them, particularly, in absence of any evidence lead by the defendant as regards the same.

22. It is a notable fact that on one hand it is the case of the defendant himself that he is an adopted son of the plaintiff and her husband Laxman and, therefore, he is enjoying all the properties of deceased Laxman and on the other hand, he raises challenge to the amount of maintenance granted by the Courts below.

23. In that view of the matter, I do not find any perversity or illegality in the impugned Judgment passed by the lower appellate Court.

24. In above referred backdrop, I do not find any substantial question of law involved in the present appeal. The appeal is dismissed.

25. No order as to costs.

26. Pending civil application stands disposed of, accordingly.

(ANIL S. KILOR)
JUDGE