

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FAMILY COURT APPEAL NO.351 OF 2014

Smt. Megha wd/o Amol Padole,
Aged 28 years, Occupation-Nil,
R/o. C/o. Shri Subhashchandra Bondre,
Plot No.79, Netaji Nagar,
Behind Old Pardi Naka,
Nagpur.

.. Appellant

.. Versus ..

1. Vasantryao s/o Govindaji Padole,
Aged Major, Occupation-Business.

2. Tarabai w/o Vasantryao Padole,
Aged Major, Occupation-Business,

Both R/o. 67B, Vivekanand Nagar,
Behind Sai Mandir, Wardha Road,
Nagpur.

.. Respondents

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Shri Rahul Tajne, Advocate for Appellant,
Smt. R.S. Dewani, Advocate for Respondents.

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CORAM : A.S. CHANDURKAR AND
N.B. SURYAWANSHI, JJ.

RESERVED ON : 20.01.2021.

PRONOUNCED ON : 11.02.2021.

JUDGMENT [PER : N.B. SURYAWANSHI, J.]

1. This appeal filed under Section 19 of the Family Courts Act, 1984 by the appellant-daughter-in-law challenges the judgment of the learned Family Court, Nagpur in Petition No. C-84/2008 thereby dismissing the petition filed by her for maintenance against the father-in-law and mother-in-law.

2. Facts, in brief, leading to this appeal are as under:

The appellant filed petition under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the said Act') *inter alia* contending that she got married with the respondent's son Amol on 03.05.2007. After the marriage, she started residing at her matrimonial home. Amol met with an accident and expired on 21.02.2008. After the death of Amol, the appellant resided at her matrimonial home with the respondents, but gradually the respondents severed the relations with the appellant. The respondents received an amount of Rs.42,98,970/- towards the death claim of Amol. The appellant was entitled for half share in the said amount. Further contention is that the respondents also received other claims like Gratuity, Renewal Commission, Group Insurance etc. even in that amount, the appellant had half share. The appellant further averred that the respondents failed to return

golden ornaments weighing 350 grams and the gift articles received by her in the marriage. On 16.04.2008, a meeting was called at the residence of the respondents with the help of the appellant's parents and other elderly persons, in which a mutual agreement was executed hurriedly. The appellant and her father could not understand the contents of the same. Copy of the agreement was also not supplied to the appellant. Though the appellant was called after 10 to 15 days from the date of that meeting for the ornaments, the respondents did not return the ornaments and on the contrary, lodged a false report against the appellant and her family members. The appellant claimed that she was unable to maintain herself and she had no source of income. The respondents drove her out of the matrimonial home. The estate of the deceased husband of the appellant was in the custody of the respondents, hence they are liable to maintain her. She was constrained to issue legal notice on 09.06.2008 calling upon the respondents to return all her claims and maintenance at the rate of Rs.5,000/- per month. The respondents replied the notice by making false and frivolous allegations. It was further contended that in the reply-notice the respondents have alleged that one Tata Safari was given to the appellant. However, according to the appellant, the said vehicle was purchased in her name by her husband and she was entitled to take the same with her. The vehicle was purchased on loan and installment of the same was

more than Rs.10,000/- per month and as the appellant was unable to repay the loan installment, she was required to sell out the said vehicle to satisfy the loan. She further averred that the respondents have falsely accused that she has intentionally aborted her child. According to her, the abortion was an accident caused by stress and trauma. The appellant claimed that due to ill-treatment given to her, she was compelled to reside at her parental home. Her father was a retired Government Servant. The appellant needs money for her basic and other needs, hence she claimed maintenance of Rs.10,000/- per month from February-2008.

3. The respondents appeared and resisted the appellant's claim by filing written statement, thereby denying all the allegations specifically. They contended that Amol was a L.I.C. Agent and he had eight policies which were drawn before the marriage by the first respondent. Since he was nominee to the said policies, he had received the claim after the death of Amol. The appellant has relinquished her claim in respect of all the policies in writing on 16.04.2008 in the mutual agreement. The second respondent being mother and nominee had received the Gratuity, Renewal Commission, Group Insurance etc. Even the claim for these amounts was relinquished by the appellant in the mutual agreement dated 16.04.2008, which was executed in a meeting at the house of the

respondents where the family members of both the sides, so also some respectable persons of the society were present. The appellant signed the said mutual agreement in the presence of the Notary and she had received her 'Stridhan' articles including ornaments and she had relinquished the other claims. It was further averred that there was a locker in Yavatmal Urban Co-operative Bank, Deonagar Branch, Nagpur in the joint name of the appellant and husband Amol. Amol was operating the locker. All the golden ornaments weighing 400 grams were kept in the said locker. The appellant had full knowledge of the locker and she was also nominee to the locker. After the death of Amol, the appellant became the owner of the locker. On enquiry about the locker, the respondents came to know that on 17.01.2008 the locker was lastly operated. On 16.04.2008 i.e. on the date of mutual agreement, the first respondent along with the appellant and her parents went to the said Bank and opened the said locker, it was found empty. They stated that their golden ornaments weighing 400 grams were also kept in the same locker and the appellant must be aware of their and her ornaments. The appellant might have taken all the ornaments to her parental home. They claimed that she may be directed to return their 400 grams gold. On the date of mutual agreement, Tata Safari vehicle was given to the appellant, the value of which was Rs.8,50,000/-. According to the respondents, the said vehicle was given for monthly

maintenance of the appellant as was mentioned in the agreement. The appellant had promised to keep the vehicle till her second marriage and she was to return the same to the respondents after her second marriage. According to the respondents, Amol was young when he died and he had no self acquired property and he had not left behind any property. It was further contended that the appellant left the matrimonial home on 12.03.2008 when she was seven months pregnant and she broke all the relations with the respondents. On 14.03.2008, she aborted the fetus only with an intention to perform second marriage. Tata Safari was sold by the appellant without their knowledge. The appellant owned two plots at Netaji Nagar, Nagpur worth Rs.20 Lakhs. The appellant's father was getting handsome pension and he was also getting two lakhs income from 20 acres of irrigated land. Appellant's father had gifted Maruti-800 Car in the marriage, thus he was a rich man. The appellant was a qualified lady and her financial condition was good. According to the respondents, the dispute raised by the appellant did not relate to marriage, hence Family Court had no jurisdiction. They further pointed out that the appellant had filed Special Civil Suit No.1315/2008 for declaration and injunction wherein she had claimed same reliefs against the respondents, which was subjudice. They therefore prayed for dismissal of the petition.

4. During the pendency of the proceedings, the appellant filed pursis Exh.57 and relinquished her claim of Rs.21,49,485/- in respect of L.I.C. policies, therefore, her claim for golden ornaments and monthly maintenance only remained for adjudication.

5. Before the Family Court, the appellant filed affidavit (Exh.38) in lieu of evidence reiterating the contents of the petition. She also contended that she was at that stage giving up her claim for maintenance from 13.12.2009 as her second marriage was solemnized on that date. In the cross, she could not give any reason as to why in her petition she did not mention that her in-laws subjected her to cruelty. She admitted the fact of compromise in the meeting dated 16.04.2008 and that the settlement was reduced into writing on stamp paper of Rs.50/- and she signed the said stamp paper twice, Her mother, uncle and father-in-law have signed below the said settlement deed. A specific question was asked to her that “as the appellant agreed with the terms mentioned in that document, she signed below it, was it true.?” She answered that the document was written on four pages and she agreed with the terms mentioned on the pages which she had signed. She admitted the contents on pages 1, 3 and 4 but she did not agree with the contents on page 2. The settlement deed therefore was admitted as Exh.58/C. She also admitted that at the time of settlement, Tata Safari and Maruti-800

vehicles were given to her. She stated that Maruti-800 was gifted to her in the marriage by her maternal uncle. She denied that she aborted the child. She stated that it was a miscarriage for which she was not required to go to the Hospital. She did not, at any point of time, hear the name of Sarika Nursing Home, Central Avenue, Nagpur. She denied that on 12.03.2008 the appellant and her parental relatives decided that she should solemnise second marriage. She admitted to have solemnized second marriage, the decision for it was taken in the year 2009. She further deposed that in the settlement deed, it was mentioned that amongst other articles the golden ornaments in the locker should be given to her, however, the locker was found empty. She admitted to have received the golden ornaments mentioned in Exh.58, other than those which were in the locker. She admitted that the locker was in the joint name of herself and husband Amol and except them, nobody else had a right to open the same. She stated that she did not enquire with the concerned bank, as to whether, anybody else had opened the locker or not after the death of her husband or earlier thereto. According to her, she was not aware of existence of that locker. She admitted that Tata Safari was purchased by Amol in her name from his own income. She admitted to have sold Tata Safari. At the time of selling it, she did not obtain the consent of her mother-in-law. She also did not give the share of her mother-in-law from the amount of

consideration. She admitted that when Tata Safari was purchased, its value was Rs.8 Lacs. She admitted that it was decided at the time of settlement that whatever articles and other things she received she took it and went to her parental home and that she would be residing at her parental house forever. She further admitted that it was also decided that there would be no relation between herself and the respondents. She admitted to have severed the relations with her in-laws since then. She admitted that she did not produce any document on record to show that she was entitled for gold of 340 grams from the respondents. She stated that the bills of said gold were given to her Advocate. She admitted that her second marriage was fixed in August-2008 and was solemnized in the year 2009. She thereafter stated that her second marriage was fixed in the year 2009. She denied the other suggestions given to her that her father-in-law maintained her from March-2008 to August-2008.

6. The respondent no.1 filed his evidence on affidavit reiterating the contents of the written statement. In cross-examination, he admitted that the appellant's signature was obtained on page nos. 1 and 3 of the settlement deed Exh.58. He denied that page no.2 of that document was blank and therefore it was not signed by the appellant and the contents of page no.2 were written lateron. He admitted that there were two stamp papers but denied

that with an intention to match the context of first page and second page, the portion of last line on first page was scored out. He denied that if the portion had not been scored out, it would have matched the context of page no.3. He denied that initially on page no.3, page no. 2 was given and it was scored out and at another place page no.3 was written. He denied that the contents on 3rd page at the bottom in respect of some agreement had been scored out with whitener. According to him, the said scoring was at the behest of the appellant. He denied that on the same day of settlement they went to the bank and opened the locker. On 16.04.2008 he along with appellant and her parents went to Yavatmal Urban Cooperative Bank, Devnagar Branch, Nagpur. The Manager opened the said locker but in the said locker there was no single ornament found was not correct. He further stated that the same statement made in his written statement was also false. He stated that he did not sign his written settlement without reading and understanding. He admitted that though they did not receive ornaments weighing 400 grams, they did not issue notice to claim the said ornaments from the appellant. He admitted that Tata Safari was purchased on finance and after the death of Amol, he did not repay unpaid instalments.

7. The respondents examined Vijay Marawar as DW-2 in whose handwriting the settlement deed Exh.58 allegedly written. He

stated that the said document was executed at the house of the respondents and the same was in his handwriting. Whatever was agreed between both the parties was narrated to him and he reduced it in writing. At that time, ten to twelve persons were present. The settlement was immediately acted upon. The appellant received articles from the respondents as per the agreement. The agreement did not bear his signature. The entire settlement deed was written on the same day on the stamp paper in one sitting and on completion of his writing, the parties put their signatures on it. When he was confronted with the page of Exh.58 wherein whitener was used for scoring out earlier written portion, he could not say what was written earlier. According to him, the whitener was applied in his presence. He denied that reverse side of page no.1 was not written in the same process and that portion was lateron written in the absence of Bondre. He denied that, that portion was not signed because it was written lateron. He admitted that he did not receive any witness summons and the first respondent called him to the Court for deposition.

8. The respondents examined Ambadas Gajapure as witness no.3, who was allegedly present at the time of execution of settlement deed. According to him, the appellant received all her articles in terms of the agreement, she admitted that she would not

claim any right in future against the respondents. He signed Exh.58 at Sr.No.3 on the left side after the writing was completed. According to him, the appellant told that she wanted Tata Safari vehicle which she would return after her second marriage. The same was reduced into writing in the document. The entire dispute was over after settlement at Exh.58. When he was confronted with the portion where whitener was applied on some writing in Ex.58, he could not say what was written which was scored out. He denied the suggestion that the document was not read over to him and that he was deposing falsely at the instance of the respondents.

9. Walmik Vaidya was examined as DW-4, who claimed to be common friend of the appellant and the respondents. He deposed that he was called by the appellant's father Subhashchandra Bondre to attend the meeting. At the time of meeting, in the presence of the witnesses, the appellant was insisting that she did not went to reside with the respondents. The Agreement/Kkararnama Exh.58 was executed in the presence of all the parties wherein the appellant stated to have received all her belongings and other movables back. She had also taken back two cars one Tata Safari and another Maruti-800. As per the settlement recorded in the agreement, she had given up all her claims about the policies and agreed that she would not claim anything thereafter. The parties signed agreement

Exh.58.

10. In the cross, he deposed that the marriage of the appellant and Amol was settled by his mediation. This fact was not mentioned in his affidavit of evidence. He claimed that he could explain the last portion of the document which was scored out with whitener. According to him, after writing the document, it was read over to all present there and the appellant objected that portion, therefore, that portion was scored out and both the parties signed at the scored portion. It was mentioned in the scored portion that the appellant would take the amount of LIC. However, later on she stated that she did not want that amount, hence that portion was scored out. He admitted that the articles which were expected to be returned were written at page 3 in the Exh.58, he admitted that both the parties signed on all pages. He volunteered that back side of first page was not signed. He denied that nothing was written on the back side of first page. He admitted that appellant's brother had told him that being mediator he should return all the articles. He admitted that he lodged a complaint against the appellant's brother in the Police Station. He denied rest of the suggestions about he being more closed to the respondents.

11. The learned Family Court, after assessing the evidence,

dismissed the petition filed by the appellant for maintenance. Being aggrieved by the same, the appellant-daughter-in-law has filed the present appeal.

12. Heard the learned Advocate for the appellant and the learned Advocate for the respondents.

13. The learned Advocate for the appellant assailed impugned judgment on various grounds. He submitted that the learned Family Court has failed to properly appreciate the evidence on record. The findings recorded by the Family Court are erroneous and contrary to the material on record. He submitted that the appellant has led cogent and reliable evidence to prove her case and the Family Court ought to have allowed her petition. By pointing out the pleadings, he argued that the LIC papers and gold ornaments belonging to the appellant and her deceased husband were entrusted with the respondents being elder members of the family. He further submitted that Tata Safari vehicle was in the name of the appellant and she was entitled to take it with her. As the said vehicle was purchased on installments and as the appellant was unable to pay the installments, the vehicle was required to be sold and the loan was repaid. By taking us through the cross-examination of first respondent, he submitted that it was admitted that Tata Safari was

purchased on finance and the first respondent did not repay the unpaid installments after the death of Amol. He further placed reliance on the judgment and decree passed in Special Civil Suit No.1315/2008 filed by the appellant against the respondents for recovery of amount, declaration and permanent injunction, a copy of the same was placed on record. He pointed out para 16 of the said judgment wherein, while deciding the said suit, settlement deed Exh.58 was considered. The learned Civil Judge, Senior Division, Nagpur in that case, after analyzing the evidence, came to the conclusion that the appellant proved that the alleged mutual agreement dated 16.04.2008 was bogus and fabricated. The learned Advocate, therefore, submitted that the Family Court has recorded perverse finding and the appellant is entitled for return of her golden ornaments and maintenance till the date of her remarriage.

14. In reply, the learned Advocate for the respondents placed reliance on the pursis filed by the appellant at Exh.57 wherein the appellant had given up her claim for the amount of LIC policies. She submitted that the decision rendered in Special Civil Suit No.1315/2008 is subject matter of challenge in appeal before this Court and the findings in that case have not attained finality. She further argued that the bills of ornaments were not placed on record. By taking us through the evidence of the appellant, she submitted

that the appellant had told lies about the abortion. According to her, since the appellant had sufficient means i.e. two vehicles Tata Safari and Maruti-800 as well as her jewellery which she received in terms of the settlement, she was not entitled for maintenance. She further submitted that in view of Section 19 (2) of the said Act, unless the coparcenary property of the deceased husband was received by the respondents, they were not liable to maintain the appellant, since no coparcenary property of Amol was in possession of the respondents, they were not liable to maintain her. She, therefore, claimed that there is no substance in the appeal filed by the appellant and hence appeal is liable to be dismissed.

15. The learned Advocate for the appellant replied argument of the learned Advocate for the respondents contending that in view of the fact that the amount of Rs.42,00,000/-received from LIC and the amounts of Gratuity, Renewal Commission, Group Insurance Scheme and Club Agents Free Insurance Cover were received by the respondents, they were holding the property of deceased Amol and, therefore, they are liable to pay the maintenance to the appellant.

16. We have heard the submissions of the learned Advocate representing the parties at length and perused the record. On hearing the rival submissions, following points arise for adjudication:

- (i) Whether the appellant is entitled for maintenance and return of her golden ornaments?
- (ii) Whether the learned Family Court was justified in rejecting the claim of the appellant for maintenance and gold ornaments?

17. On close scrutiny of evidence on record, we find that the appellant has failed to prove that her 350 grams golden ornaments were with the respondents and she was entitled to receive back the same from the respondents. She has failed to produce the bills of her ornaments. Though she has stated that the bills of golden ornaments were given to her counsel, the same are not produced on record. She has categorically admitted that she had received the golden ornaments, which were mentioned in Exh-58. She has further admitted that the locker in the Bank was in joint name of her and Amol's and after the death of Amol when they went and opened the locker, nothing was found in the locker. She has also admitted that from the death of her husband, till they went to open the locker, nobody had right to open the locker. Admittedly, she did not enquire with the Bank Authorities, as to whether, anybody else had opened the locker. Thus, the appellant has failed to prove that her 350 grams golden ornaments were with the respondents and she was entitled to receive them back.

18. From the evidence on record, it appears that after the

death of husband Amol on 21.02.2008, the appellant went to her maternal home. Though initially the respondents were in contact with her, gradually they severed relations with her. The respondents admitted to have received LIC claim amount of Rs.42,00,000/- (which was the subject matter of Special Civil Suit No.1315/2008). The second respondent has received the amounts like Gratuity, Renewal Commission, Group Insurance Scheme and Club Agent Free Insurance Cover of deceased Amol. Therefore, in terms of Section 19 (a) of the said Act, it can be safely held that the respondents were holding estate, the same can be termed as estate of Amol. Section 21 defines dependents and a widow of the deceased is a dependent so long as she does not remarry. Under Section 22 of the said Act, the heirs of a deceased Hindu are bound to maintain dependents of the deceased out of the estate inherited by them from the deceased. Thus, these provisions clearly recognize the entitlement of a widowed daughter-in-law to the right of maintenance. In **Madhukar .vs. Shalu, 2013 (6) Mh.L.J.391** which is authored one of us (Hon'ble Shri Justice A.S. Chandurkar), it was held that Sections 19 and 21 of the Hindu Succession Act, 1956 (for short 'the said Act') creates first obligation to maintain his widowed daughter-in-law on father-in-law. It was also held that the burden of the father-in-law shifts to father of widow only in case of inability of father-in-law. The circumstances in which or extent to which the father-in-law

obliged to discharge obligation is regulated by Section 19 of the said Act. It was further held that object of Section 19 of the Act was to recognize the right of widowed daughter-in-law to receive maintenance from either of sources mentioned in that section. The widowed daughter-in-law was held to be entitled to maintenance from 'other property' or from estate of her husband. In absence of that the liability to maintain the widowed daughter shifts on the father.

19. Applying the above ratio to the facts of the present case, it is clear that the claim amounts received on death of Amol were with the respondents. The appellant has proved that she was unable to maintain herself and the respondents have neglected and refused to maintain her. The contention of the respondents that since the appellant was given Tata Safari and Maruti-800 vehicles and jewellery, she had sufficient means to maintain herself is liable to be rejected at the threshold. There is no evidence brought on record by the respondents to show that the appellant was able to maintain herself. In this view of the matter, we are of the considered view that the respondents were having sufficient means to maintain the appellant from the estate of her deceased husband. The respondents sought to rely upon Exh.58 to claim that the appellant had given up all her claims, it does not appeal to us. Exh.58 since has been held to

be a bogus and fabricated document by the competent Civil Court in Special Civil Suit No.1315/2008 and the same being the subject matter of the first appeal pending in this Court, we refrain to make any comments on the admissibility of the said document. Fact remains that the appellant has disputed page no.2 of Exh.58, wherein she had allegedly given up all her claims.

20. The learned Family Court has failed to appreciate the evidence on record in the proper perspective. It has ignored the date of remarriage given by the appellant as 13.12.2009 in examination-in-chief and has erroneously observed that the date of remarriage of the appellant has not come on record. This finding being contrary to the record reflects non application of mind on the part of the learned Family Court. Further finding of the learned Family Court that at the rate of Rs.10,000/- per month maintenance for 18 months the appellant was entitled of Rs.1,80,000/- and since vehicle Tata Safari worth Rs.8,00,000/- was given to her, she had received more amount than claimed, is also erroneous and to that extent perverse, as the learned Family Court has ignored the relevant aspect that Tata Safari vehicle was taken on loan and installment of Rs.10,000/- per month was required to be paid. The first respondent admitted in his cross that he did not pay any installments of Tata Safari after the death of Amol. The evidence of appellant that the said vehicle was required

to be sold, as she was unable to pay the installment and the loan amount was cleared, is ignored by the learned Family Court. The finding recorded by the learned Family Court, while denying maintenance to the appellant, are contrary to the evidence on record. The most important aspect of the respondent having received the claim amounts of the deceased Amol in which the appellant had share has been erroneously ignored by the learned Family Court. While denying maintenance to the appellant, the provisions of Sections 19, 21 and 22 of the said Act were misread and misconstrued by the learned Family Court and it ignored the object and purport of the said provisions. The learned Family Court has given undue weightage to the abortion/miscarriage of the appellant, which had no bearing to the entitlement of maintenance of the appellant. We are unable to agree with the conclusion of the learned Family Court that as the appellant has admitted that her father was a retired employee of railway and was maintaining her when she had been to the parental home and, therefore, the appellant was not entitled for maintenance from the respondents. In the light of ratio of **Madhukar** (supra), this finding is unsustainable.

21. For the aforesaid reasons, we are of the considered view that the appellant is entitled for maintenance for the period between 21.02.2008 to 13.12.2009 i.e. from the date of death of Amol till her

remarriage. Since the respondents are holding the claim amounts of deceased Amol of more than Rs.42 Lacs, they are holding the estate of the deceased husband of the appellant and hence they are liable to pay the maintenance to the appellant. The points as framed are answered accordingly. Taking into consideration the status of the parties and the material on record, we are of the opinion that the maintenance at the rate of Rs.7,500/- per month would meet the ends of justice. Hence the following order :

ORDER

- i) Family Court Appeal No.351 of 2014 is partly allowed.
- ii) The impugned judgment passed by the Family Court No.2, Nagpur in Petition No.C.84 of 2008, is hereby set aside. The respondents are directed to pay the maintenance at the rate of Rs.7,500/- per month for the period between 21.02.2008 to 13.12.2009, within a period of four weeks from today. The claim for return of gold ornaments is rejected.
- iii) The respondents shall pay the costs of Rs.10,000/- to the appellant towards the litigation expenses.
- iv) Decree be drawn up accordingly.

(N.B. Suryawanshi, J.)

(A.S. Chandurkar, J.)