

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16323 OF 2019

Jharan Das and another

....

Petitioners

Mr. Niranjan Lenka, Advocate

-versus-

Malay Ketan Das

....

Opp. Party

Mr. A. Routray, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

20.07.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 22nd April, 2019 passed by learned Judge, Family Court, Kendrapada in C.P. No.46 of 2013, whereby he passed a composite order by rejecting an application to strike off the name of Petitioner No.2 from the cause title of the petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act') as well as an application under Order VI Rule 17 C.P.C. The Petitioners in this writ petition assail the order rejecting the petition for amendment.
3. Mr. Lenka, learned counsel for the Petitioners submits that during pendency of the civil proceeding, the salary of Opposite Party-Husband was enhanced. In order to bring the same on record, she filed an application to incorporate in the petition under Sections 18 and 20 of the Act the figure of the enhanced salary of her husband and their entitlement in view of such enhancement in salary. Learned Judge, Family Court, Kendrapada without

considering the same in its proper prospective, rejected the petition holding that the same is not required for just adjudication of the case. The Petitioners also prayed for inclusion of certain properties in the schedule of the petition, which was rejected. The Petitioners, therefore, finding no other alternative, has filed this writ petition assailing the impugned order.

4. Mr. Lenka, learned counsel for the Petitioners further submits that since the salary of Opposite Party was enhanced during pendency of the civil proceeding, it was incumbent on the part of the Petitioner to bring the same to the notice of the Court for determination of a just and reasonable quantum of maintenance. Accordingly, the amendment was sought for. Further, there are certain properties, which could not be included in the schedule of the petition for determination of the income of Opposite Party from the agricultural sources. Thus, the same is required to be incorporated in the petition. Learned Judge, Family Court, Kendrapada could not appreciate the purport of seeking amendment to the petition. Thus, the impugned order is not sustainable and is liable to be set aside. He, therefore, prays to remit the matter back to the learned Judge, Family Court, Kendrapada for consideration of the application under Order VI Rule 17 C.P.C. afresh.

5. Mr. Routray, learned counsel for the Opposite Party submits that the figure and particulars of salary of the Opposite Party at the time of filing of the civil proceeding is already available on record. The salary certificate of Opposite Party has already been filed. Thus, there is no requirement to make an

amendment to that effect. He, however, submits that by the time the amendment application was filed, three witnesses from the side of the Petitioner have already been examined. The Petition under Order VI Rule 17 C.P.C. also does not disclose due diligence of the Petitioner for not filing the petition for amendment before commencement of the trial. He also submits that out of the properties mentioned in the schedule, Plot Nos.973, 978 and 912 along with homestead land belong to Opposite Party along with other co-sharers and they are in peaceful possession of the said land. Likewise, Plot No.857 is a homestead land. Hence, those cannot be taken into consideration for determination of the maintenance. Learned Judge, Family Court, Kendrapada considering the same has passed the impugned order, which needs no interference.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, this Court finds that the Petitioners describing the salary of Opposite Party and their entitlement have made definite averments in the petition filed under Sections 18 and 20 of the Act. On that basis, they have also led evidence and were also cross-examined. The salary certificate of the Opposite Party has already been filed, as stated by learned counsel for the parties, which forms a part of the record. Enhancement of the salary during pendency of the civil proceeding can be appropriately considered by learned Judge, Family Court, Kendrapada, if the evidence to that effect is led. Thus, amendment of the pleadings is not required to be made for the same. So far as agricultural income of the Opposite Party is

concerned, it appears that homestead properties along with certain agricultural properties stand in the name of Opposite Party as well as other co-sharers. The Petitioners did not disclose as to why they could not incorporate those properties in the schedule of the petition before commencement of the trial.

7. In that view of the matter, I find no infirmity in the impugned order. Accordingly, the writ petition being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

