

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.169 of 2022

Pravasini Mahakud

....

Appellant
Mr. G.N. Parida, Adv.

-Versus-

Rashmi Jena Tiwari & Ors.

.....

Respondents

CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO
ORDER
19.10.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. G.N. Parida, learned counsel appearing for the appellant.
3. By means of this appeal filed under Section 19 (1) of the Family Courts Act, 1984, the Judgment dated 19.07.2022 delivered in C.P. No.45 of 2018 by the Judge, Family Court, Dhenkanal has been challenged.
4. By the said Judgment, the claim of the appellant under Section 25 (1) of the Hindu Marriage Act, 1955 seeking *posthumous* alimony has been dismissed. The facts which are considered relevant is introduced at the outset. The appellant and the deceased husband namely Anurag Singh Tiwary got married on 13.03.1994. Having

faced with the marital discord, the appellant herein filed a matrimonial suit for divorce which was allowed by an ex parte decree dated 23.02.2015 in C.P. No.89 of 2013.

5. The said decree was passed on 23.06.2014. Whereas unfortunately, her husband died on 23.02.2015. The admitted position of the fact is that the appellant did not insist for any permanent alimony in the matrimonial suit or otherwise but after the death of her husband on 23.02.2015. She instituted C.P. No.45 of 2018 for having the permanent alimony from the legal representatives (LRs) of the deceased husband. It is borne in the records that the appellant, earlier to the said suit, the appellant initiated another suit being C.P. No.82/2016 in the same set of facts and reliefs.

6. The legal representatives of the deceased husband did participate in the proceeding to a limited extent. The Judge, Family Court examined the claim of the permanent alimony for an amount of Rs.35 lakhs.

7. The issue that emerged for consideration is whether the said matrimonial suit can be maintained under Section 25 (1) of the Hindu Marriage Act, 1955 in as much as such relief is exclusively related to the marital obligation. After giving the reference to Section 25 (1) of the Hindu Marriage Act, 1955, in Para 6 of the said Judgment, the Judge, Family Court has placed the reasons extensively why he had intended to dismiss the said suit. The relevant part from the said Judgment is reproduced gainfully:

“She has pleaded alright about filing of C.P. No.89/2013, where she got the decree

of divorce ex-parte, but did not get any order relating to permanent alimony or alternatively no order was passed on that score. She has not disclosed anywhere in the plaint of this case, about filing of C.P. 82/2016 followed by dismissal of the same for her default followed by her non-attempt or no attempt to restore the same. As per bar of O.9 R.9 CPC, the petitioner, procedurally cannot be allowed to present a fresh suit, suppressing the fact of dismissal of the previous suit filed on self same cause of action of for the same relief. So certainly do I agree with the argument of Sri Tripathy, the ld. counsel for the contesting O.Ps. that presentation of the instant suit is barred by the provision of O.9 R.9 C.P.C.”

8. Further it has been observed that Pravasini Mahakud (the appellant) is the divorced wife and she had obtained an ex-parte divorce against Anurag Singh Tiwari, since deceased, her ex-husband. Sri Tripathy, learned counsel for the appellant has strenuously argued that U/Sec.25 of the H.M. Act, the divorced wife can, even after passing of the decree of divorce, claim the permanent alimony and get the claim adjudicated in her favour. But for that to happen, we are constrained to observe that her claim shall be directed against her ex-husband only. Admittedly, Pravasini did not secure any order of permanent alimony or due adjudication against her ex-husband, Anurag Singh Tiwari during his life time. She should have done that in order to achieve relief U/s.25 of the H.M. Act. She had instituted

proceeding being C.P. 82/2016 for that purpose against her former husband posthumously, but that was dismissed for her default. Thereafter, so she did take any action to get that suit restored. Having not done so or having not got an adjudication during his life time, now she cannot advance any claim of the permanent alimony after more than three years of death of her ex-husband by way of a fresh suit.

Had it been a case while obtaining the ex-parte decree of divorce or while granting ex-parte decree of divorce, the Court had granted Pravasini, a decree of permanent alimony, the present suit would have been perfectly maintainable. The Judge, Family Court continued to observe that then, that would have been an open and shut case. In this case, it is clear or obvious that there is no pre-adjudicated right or decree of permanent alimony running in favour of the petitioner Pravasini Mahakud. No decree of permanent alimony was ever passed by the Court, while granting ex-parte decree of divorce in C.P. No.89/2013. That is a hard fact. There is a great degree of difference or variance in claiming maintenance or permanent alimony from the estate of the deceased ex-husband, so far as a divorcee wife is concerned vis-à-vis her right to claim permanent alimony against the L.Rs of her deceased ex-husband. Both the factual situations cannot be matched or cannot be co-related. Having observed thus, the petition was dismissed. Those findings are under challenge in this appeal.

9. Mr. G.N. Parida, learned counsel appearing for the appellant has submitted that the divorced wife has right to claim permanent alimony even after the decree of divorce is passed and at any time

when she would face vagrancy even if she had not claimed permanent alimony earlier. In support of his claim, he intended to refer some reports of various High Courts but on keen reading, it has come to the fore that those decisions are relating to enforcement or execution of the alimony or the maintenance as determined during the life time of the spouse or the former spouse, who is legally obligated to pay the alimony or the maintenance. There is no difference of opinion in this regard. Those decisions cannot salvage the appellant from the present situation.

10. We do not find after due scrutiny, any infirmity in the finding of the Judge, Family Court in as much as the wife did not claim any permanent alimony while her husband was alive nor any order of maintenance was passed which provided her right to claim the maintenance perennially. Hence, no claim will against the L.Rs of the deceased husband. Even the appellant can claim any share of the property for death of her former husband.

11. So far the proceeds of the service is concerned, since, those accrued after or for death of the husband of the appellant, as the former wife she cannot have any right over those properties. The law in this regard is unambiguous. So far the payment of the maintenance is concerned, this is not a case where the appellant had any right determined before the death of her husband, and as such there is no question of discharging of any obligation relating to payment of the maintenance by the L.Rs.

12. We do affirm the finding of the Judge, Family Court that since the appellant's suit being C.P. No.82/2016 was dismissed for default.

The appellant cannot be allowed to institute a fresh suit or proceeding on the same set of facts and reliefs.

13. It may be true that the appellant is facing some difficulty but unfortunately, the right that has been created in favour of the divorced wife cannot be availed by the petitioner for the reasons stated above. Hence, this appeal stands dismissed at this stage. Draw the decree accordingly.



(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



