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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 8662 OF 2009

Jambu Dadu Kage ... Petitioner
Versus
Bharti Suresh Kage and Ors. ... Respondents

Mr. Tejpal S. Ingale for the Petitioner.
None for the Respondents.

CORAM: ROHIT B. DEO, J.
DATE : 16th JUNE, 2022

P.C. :-

1. Heard the learned counsel for the petitioner.
2. None appears on behalf of the respondents.
3. The petitioner is the original defendant 4 in Regular Civil Suit 23 of 1997 which is instituted by respondents 1 to 3 under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'Act').
4. Defendant 1-Mr. Suresh S. Kage is the husband of plaintiff 1-Mrs. Bharti S. Kage, defendant 2-Mr. Shrimandhar D. Kage is the father-in-law of Mrs. Bharti S. Kage, defendants 3 and 4 are the brothers of defendant 2.
5. Perusal of the averments in paragraph 7 of the suit plaint reveals

that even according to the plaintiffs, defendants 3 and 4 are impleaded as formal parties since their names appear in 7/12 record. Significantly, there is no relief sought against the defendant 4-the present petitioner.

6. The learned Trial Judge decided the suit vide judgment and decree dated 21st March, 2003. While defendant 1 appeared and failed to file written statement, defendants 2 to 4 did not appear in the proceedings. In the body of the judgment, the learned Judge holds that the plaintiffs are entitled to monthly maintenance from defendant 1. However, the operative part reads thus :-

ORDER

1. *The suit is decreed with costs.*
2. *The Defendants are directed to pay monthly maintenance of Rs.1500/- for Plaintiff No.1 and Rs.1000/- each for Plaintiffs Nos.2, 3 since the date of this proceedings.*
3. *Charge be kept on the property of Defendant.*
4. *A Decree be drawn accordingly.*

7. I have no doubt in my mind that the operative part is not consistent with the judgment since there is an apparent and manifest error in directing all the defendants to pay monthly maintenance. It is obvious that the expression 'the defendants' in paragraph 2 of the operative order refers only to the defendant 1 and the direction that there shall be a charge will have to be confined to the property of the defendant 1, whether exclusive or his share in joint family property. However, in no view of the matter can the present petitioner be prejudiced since the plaintiffs did not claim any relief against him and

certain inadvertent errors have crept in the operative portion of the judgment. Unfortunately, the learned Judge has declined to exercise jurisdiction under Section 152 of the Civil Procedure Code, 1908. I need not delve deeper in the reasons recorded in the order impugned since I am satisfied that the error is purely accidental and by no stretch of imagination represents the intention of the Judge.

8. The order impugned is set aside and it is declared that the judgment and decree in Regular Civil Suit 23 of 1997 shall not operate as against the defendant 4 or the properties owned by the defendant 4.

[ROHIT B. DEO, J.]