

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE M. LAXMAN

FCA.No.62 OF 2008

JUDGMENT: (Per the Hon'ble Sri Justice A.Rajasheker Reddy)

This appeal is filed against order and decree dt.05.03.2007 in FCOP.No.530 of 2005 passed by the Judge, Family Court, Secunderabad, to the extent of granting half share in respect of the property of the appellant, in the house bearing No.16-11-212, Moosarambagh, Hyderabad, to the respondent, towards permanent alimony.

For the sake of convenience, the parties hereinafter will be referred to as arrayed in the OP.

The facts of the case that the petitioner and respondent married on 07.05.1989 and on the ground of cruelty and desertion, the Court below, while granting divorce to the petitioner also held that the respondent is entitled to half share in petitioner's share in the house bearing No.16-11-212, Moosarambagh, Hyderabad. Challenging the finding of the Court below to the extent of respondent's entitlement of half share in petitioner's share as permanent alimony, present appeal is filed. In view of the same, we need not refer to the facts leading to granting of divorce and we only deal with grant of half share to the respondent in petitioner's share, as permanent alimony.

Admittedly, the respondent filed counter claim for divorce as well as permanent alimony of Rs.10 lakhs. This aspect is not in dispute and it is also not in dispute that no prayer for grant of share in the property of the petitioner was made by the respondent in the present OP before the Court below.

In Point No.4 of the impugned judgment, the Court below held as follows;

“11.Point No.4: the respondent is claiming Rs.10.00 lakhs as permanent alimony. The petitioner is drawing Rs.6,283/- as gross salary and Rs. 5,023/- as net salary as seen from Ex.P1. In order to prove the property held by the petitioner, the respondent relied on the admission of PW1 in cross examination. PW1 during cross examination stated that the house bearing No.16-11-212, Moosarambagh, Hyderabad, belonged to his paternal grand father K.Sobhanachalam and his grand father bequeathed the said house to him and his brothers and its extent is about 1000 sq.yds. The above testimony of PW1 revealed that he has 1/3rd share in the above extent of 1000 sq.yds. PW1 denied the suggestion that the said premises is fetching Rs.10,000/- towards rents. It is the evidence of PW1 that none were residing in the said premises. The respondent has not filed any document showing its market value. PW1 admitted that the respondent is suffering from arthritis. It is the contention of the respondent that she is suffering from arthritis and requires regular treatment. It is not the case of the petitioner that the respondent is having means to maintain herself. Under those circumstances, respondent in my considered opinion is entitled to permanent alimony. The respondent has not filed any document to show that the petitioner is having some other property fetching rents. Under those circumstances granting a share in 1000 sq.yds of site in my considered opinion will meet ends of justice. Since the petitioner and the respondent has no children granting half share in the petitioner's share of the property i.e. house bearing No.16-11-212, Moosarambagh, Hyderabad, is just and proper. In view of the aforementioned discussion, I answer this point in favour of the respondent and against the petitioner.”

A perusal of the aforesaid paragraph of the impugned judgment goes to show that the appellant was earning Rs. 6,283/- as gross salary and Rs. 5,023/- as net salary as per Ex.P1. However, the trial Court has granted share to the respondent in the property of the petitioner. Learned counsel for respondent vehemently argued that the trial Court can grant such relief by virtue of Section 25 of the Hindu Marriage Act, 1955, which reads as follows;

“25. Permanent Alimony and Maintenance:- (1) any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, (the conduct of the parties and other circumstances of the case), it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, (it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just).

Relevant consideration for determination of permanent alimony and maintenance:

Court has to consider the status of parties, their needs, capacity of husband to pay, having regard to reasonable expenses for his own

maintenance and others whom he is obliged to maintain. Amount of maintenance fixed should be such as she can live in reasonable comfort considering her status and mode of life she used to live; *Vinny Parmvir Parmar v. Parmvir Parmar*, AIR 2011 SC 2748:

Second Marriage of husband:

Once the husband has contracted a second marriage, the first wife is entitled in law to claim for separate residence and maintenance;

A careful perusal of Section 25 of the Hindu Marriage Act, goes to show that the Court can grant maintenance and create charge in the property of the appellant. But, Court below without granting any maintenance, straightaway granted share in the property belonging to the appellant, which is not in consonance with Section 25 of the Act, as contended by the learned counsel for respondent.

It is also a fact that the appellant-husband sold away his share of the property, which was granted to the respondent, and the same is not seriously disputed. It is also not disputed that the appellant is seriously ill and the sister of the appellant is looking after the appellant.

In view of the facts and circumstances the impugned order and decree is liable to be set aside on the ground that it is granted beyond the pleadings and prayer made by the respondent and at this point of time no useful purpose would be served in remanding the matter to Trial Court for fresh consideration, because, FCOP is of the year 2005 and the appeal is of the year 2008 and parties have become senior citizens by efflux of time and the appellant-husband is in hospital and not in a position to move from the bed.

Learned counsel for appellant-husband has stated that sister of the appellant, who is maintaining the appellant has come forward for paying some maintenance to the respondent-wife on humanitarian grounds, coming from a philanthropist family where father of the appellant has donated huge sums of money to various institutions.

If we go strictly in accordance with law, the respondent-wife will get very meager amount towards maintenance, since it is evidenced that the appellant was drawing Rs.6,283/- as gross salary. Keeping in view the peculiar facts and circumstances and the offer made by the sister of the appellant, and since the respondent has claimed Rs.10 lakhs towards maintenance, we are of the opinion that an amount of Rs. 8 lakhs can be granted towards permanent alimony to the respondent.

Since it is stated by both the counsel that Rs.2 lakhs has already been paid to the respondent in compliance of the interim order dt.23.06.2008, the balance amount of Rs.6 lakhs needs to be paid to the respondent towards permanent alimony.

We are aware of the fact that since the sister of the appellant is not a party to the appeal, she cannot be directed to pay the amount as per Law. Since the appellant is in hospital and not in a position to move from the bed, and as the sister of the appellant on her own volition has come forward and offered the amount, as a benevolent measure we are modifying the order and decree as follows;

The sister of the appellant Smt.Jayalakshmi, who is resident of USA, now in India, will pay the balance amount of Rs.6 lakhs to the respondent.

The counsel for respondent shall furnish the Bank Account details of the respondent to the appellant's counsel.

On furnishing such information, the appellant/sister of the appellant shall pay Rs.6 lakhs within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the appeal is disposed of. No order as to costs.

As a sequel thereto, miscellaneous applications pending, if any, shall stand closed.

A.RAJASHEKER REDDY, J

M.LAXMAN, J

15.03.2022
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**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
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HON'BLE SRI JUSTICE M.LAXMAN**

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