

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.340 OF 2019
WITH CA/7280/2019 IN SA/340/2019 WITH CA/858/2023 IN
CA/7280/2019

RAUSAHEB RANGNATH BANGAR
VERSUS
RADHABAI RAOSAHEB BANGAR

...

Advocate for Appellant : Mr. S. V. Mundhe

...

CORAM : R.M. JOSHI, J

DATE : MARCH 28, 2023

PER COURT :

1. This appeal is preferred by Appellant-Husband, takes exception to the judgment and decree passed in R.C.A. No. 128/2018, confirming judgment of trial Court in RCS No. 222/2009 filed under Section 12 of Hindu Adoption and Maintenance Act, 1956 (for short '**Act of 1956**'). Parties are referred to by their nomenclature in suits.

2. Brief facts which led to filing of present appeal can be summarized as follow. Plaintiff filed suit bearing no. 222/2009 invoking Section 18 of the Act of 1956. She averred about her marriage with defendant and from said wedlock begotten one son and two daughters. Both daughters are married and son stays

separately. It is stated that defendant husband had extra marital relations and staying at Aurangabad. It is alleged that plaintiff is not maintained by him by last six years. According to her, defendant is employed in Government Milk Dairy at Jalna and earning Rs. 20,000/- per month. Plaintiff claims maintenance at Rs. 8,000/- per month.

3. Defendant by filing written statement denied claim of plaintiff. However, relationship between them is not disputed. It is claimed that defendant has given share in the property to plaintiff and son and that plaintiff is able to maintain herself. All other allegations are denied.

4. Learned trial Court accepted case of plaintiff and by judgment and decree dated 29.04.2016, directed defendant to pay maintenance of Rs. 3,000/- per month. Appeal preferred against the same in RCA came to be rejected by first appellate Court.

5. Learned Counsel for the Appellant states that the trial Court and the first appellate Court have committed error in passing the impugned judgments of

directing payment of Rs. 3,000/- per month to the Respondent towards maintenance. He referred to the suit for partition bearing RCS No. 174/2003 in which compromise took place and irrigated land was given into the possession of plaintiff by defendant. He further states that the Respondent has sold the property which came to her share and which indicates that there is sufficient income for the Respondent to maintain herself. It is further argued that defendant has now retired from service and has no source of income.

6. Perused pleadings and evidence on record. There is no dispute about the fact that plaintiff is legally wedded wife of defendant as their marriage subsists even as of today. Plaintiff has not only pleaded about defendant not maintaining her but has also examined herself. She has further proved the employment and income of defendant by examinintg Dattatraya (Exh. 23). On the other hand, defendant led his evidence at Exh. 30 and also examined a witness Shaikh Salar Hussain (Exh. 42), who is Gramsevak. He relied upon documentary evidence i.e., compromise decree in R.C.S. No. 147/21003, 7/12 extract, mutation

entries etc.

7. Section 18 of Act of 1956, provides for maintenance of a Hindu wife. There is no dispute about applicability of this provision to the parties herein. AS per this provision, Hindu wife shall be entitled to be maintained by her husband during lifetime. Sub-section (2) entitled a wife to live separately from her husband without forfeiting the claim of maintenance in the situations provided by clause (a) to (g). She however would not be entitled to claim maintenance if she is unchaste or ceased to be Hindu by conversion to another religion, as per Sub-section (3).

8. From evidence on record, it is clear that defendant is staying at Aurangabad, whereas the plaintiff resides at Nalewadi. Though there is no other evidence led by plaintiff to show extra marital affairs of defendant and he staying with another lady at Aurangabad but on the basis of evidence led by defendant, it can be held that plaintiff has deserted defendant. In respect of income of defendant, evidence is brought on record in form of salary Register. Similarly, there is no denial of the fact that

defendant is in Government service and therefore, even after retirement would be entitled to get pension. The defendant also possesses agriculture land. Thus, even today defendant cannot claim himself to be without income. With regard to the compromise decree in RCS No. 174/2003, it is clear from the evidence of defendant that though such decree was passed, practically he looks after the affairs about properties with consent of their son. Thus, there is nothing to show that in fact plaintiff has received anything from transaction of sale of property.

9. There is no material on record to show that Sub-section (3) of Section 18 of the Act of 1956 has application to the case to deny right of maintenance to wife. Having considered the evidence on record, the amount of maintenance of Rs. 3,000/- per months granted by the trial Court is not excessive. There is nothing on record to show that the plaintiff was able to maintain herself. There is no dispute about the fact that the Appellant is husband of Respondent and that it is his legal obligation to maintain his wife. In the result, this Court finds no infirmity in the orders

impugned herein. No substantial question of law is involved herein. Hence, Appeal stands dismissed. No order as to costs.

10. Pending applications are also disposed of, in view of disposal of appeal.

(R.M. JOSHI, J.)

Malani