



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

SECOND APPEAL NO. 331 OF 1999

Dashrath Dasra S/o Waman Dhepe,
Age : 40 Years, Occu. : Agril.,
R/o Lakangaon, Tq. Kallam,
Dist. Osmanabad. .. Appellant

Versus

Sitabai W/o Dashrath Dhepe,
Age : 37 Years, Occu. : Household,
R/o Lakangaon, Tq. Kallam,
Dist. Osmanabad.
at present Palsingan,
Tq. and Dist. Beed. .. Respondent

Shri Vivek V. Bhavthankar, Advocate for the Appellant.
Shri Jayant Chitnis, Advocate for the Respondent – absent.

CORAM : SHAILESH P. BRAHME, J.
DATE : 16TH OCTOBER, 2025.

JUDGMENT :-

. Heard Mr. Vivek Bhavthankar, learned counsel for the appellant. None appears for the respondent.

2. Second appeal is emanating from alternate findings of facts. The Trial Court is against the respondent-plaintiff and the Appellate Court is in her favour.

3. The respondent instituted R.C.S. No. 225 of 1988 U/Sec. 18 of the Hindu Adoption and Maintenance Act (for the sake of

brevity and convenience hereinafter referred as to the 'Act') seeking maintenance against the appellant-defendant. Respondent claimed to be married wife of the appellant. Since 1971 she resided with the appellant. It is further contended that she was not treated well and she was harassed by the appellant on account of dowry and various demands. She was driven out of the matrimonial home with a threat to do away with her. It is further contended that no provision was made for her maintenance and she had no source of income. Hence suit was filed for maintenance.

4. Appellant contested the suit by filing written statement. Marriage between the parties is denied by him. Further allegations are also denied. It is specifically contended that he was married with Sagjanabai before 28 years and has issues out of the wedlock.

5. Parties adduced oral evidence. Trial Court vide judgment and decree dated 20.06.1991 dismissed the suit on merits. Being aggrieved R.C.A. No. 141 of 1991 was preferred. By impugned judgment and decree appeal was partly allowed awarding maintenance of Rs. 200/- per month from the date of filing of the suit.

6. Learned counsel for the appellant submits that there is no tangible material to show that marriage was solemnized between the parties. It is further submitted that the lower Appellate

Court failed to exercise the jurisdiction U/Sec. 96 read with Order XLI of the Code of Civil Procedure while reserving the findings. It is further submitted that the impugned judgment is based upon conjunctures and surmises. It is further submitted that in the maintenance proceedings U/Sec. 125 of the Code of Criminal Procedure, maintenance was granted to the respondent, but later on it was reserved by the Revisional Court. It is submitted that inconsistencies in the oral evidence, which were rightly noted by the Trial Court have been overlooked. The claim of the respondent is not supported by any evidence and liable to be rejected.

7. Appeal was admitted vide order dated 07.03.2001 on the substantial questions of law reflected in ground Nos. IV, V and VII. The respondent examined P.W. Nos. 1 to 4. Appellant examined D.W. No. 1 and 2. She claims to have been married with the appellant in the year 1971. Except oral evidence there is no tangible material to show the marriage between the parties. The voter lists at Exhibit No. 63 and 67 are corroborative piece of evidence for cohabitation.

8. I have gone through the judgment passed by the Trial Court dismissing the suit. A candid inconsistency is noticed by the Trial Court in her evidence when she stated that her father was alive and present at the time of marriage. But P.W. No. 2 deposed that father died in the year 1969. Further inconsistency was noticed in the amount of dowry. Her evidence showed Rs.

2,100/-, whereas evidence of P.W. No. 2 discloses amount of Rs. 2,500/- paid to the appellant. Besides that the Trial Court recorded that best possible evidence was not adduced by the respondent. Her witness Baliram Jagtap is found to have absent in the marriage. She was unable to disclose as to whether priest Bapurao Joshi was alive or not.

9. The Trial Court has meticulously considered the oral evidence and the conduct of the respondent. The evidence of the respondent is found to be unreliable. The contradictions are taken into account. The voter list at Exhibit 67 is also taken into account for coming to the conclusion that appellant was married with Sagjanabai. For solemnization of the marriage and the cohabitation no convincing evidence is found by the Trial Court and the suit was dismissed.

10. The Appellate Court is empowered to appreciate the evidence on record. It is a last court on fact and law. Judgment does not reflect the consideration of the inconsistencies in the evidence of the respondent and her witnesses. The contradictions are not taken into account. I find that lower Appellate Court did not come in close quarters with the reasoning assigned by the Trial Court and then assigned independent reasons for reserving the findings. The lower Appellate Court failed to exercise the jurisdiction as contemplated U/Sec. 96 read with Order XLI of the C. P. C. which is error of jurisdiction.

11. I cannot be oblivious of the fact that in the present matter the decision hinges upon the credibility of witnesses. Then unless there is some special feature about the evidence of a particular witness which has escaped the trial Courts notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Courts on a question of fact. I am fortified by the law laid down by the Supreme Court in the matter of Santosh Hazari Vs. Purushottam Tiwari (Deceased) By L.Rs. reported in (2001) 3 SCC 179. I find while reversing the judgment the lower Appellate Court failed to follow the principles laid down by the Supreme Court in para No. 15 of the reported judgment. I find that impugned judgment is unsustainable.

12. For claiming maintenance U/Sec. 18 of the Act validity of marriage is not *sine qua non*. But there has to be some material to show the marriage and the cohabitation which can be tested to the touch stone of preponderance of probability. In absence of such material the respondent is not entitled to receive maintenance U/Sec. 18 of the Act. Marriage between the parties is doubtful mainly due to the conduct of the respondent and her failure to bring reliable evidence on record. Except her bare version that she was neglected and refused to be maintained by the appellant, there is nothing on record to indicate that appellant is liable to maintain her. Her claim for maintenance

U/Sec. 125 of the Cr. P. C., which was allowed by the Trial Court, was reversed by the revisional court.

11. Considering the substantial question of law framed, I find that appellant has made out the case that he is not bound to provide maintenance to the respondent. In that view of the matter, I hold that second appeal succeeds. I, therefore, pass following order.

O R D E R

A. Second appeal is allowed.

B. Impugned judgment and decree dated 23rd April, 1998 passed by the District Judge, Beed in R. C. A. No. 141 of 1991 is quashed and set aside.

C. R.C.S. No. 225 of 1998 filed by the respondent for maintenance shall stand dismissed.

D. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25