



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.522 OF 2023

Ravindra Vishwanath Magar,
age 63 years, Occ. Retired,
R/o Plot no.71, "Tejas",
Khandoba Nagar, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.

Appellant/
orig. defendant.

VERSUS

Sindhubai Ravindra Magar
age 44 yrs, Occ. Household,
R/o C/o Khanduji Yadav Badekar,
Darvevadi, Tq. Nagar,
Dist. Ahmednagar.

Respondent
orig. plaintiff.

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Advocate for Appellant : Mr. P.R. Katneshwarkar Sr. Advocate
i/b Mr. R.R. Kazi

Advocate for Respondents : Mr. P.U. Gujrathi h/f Mr. V. P.
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CORAM : S. G. CHAPALGAONKAR, J.
Dated : February 05, 2025

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FINAL ORDER :-

1. The appellant/original defendant assails the judgment and decree dated 24.7.2019 passed by the District Judge-5, Ahmednagar in R.C.A. No.46 of 2015, by which the judgment and decree dated 10.12.2014 passed by the Civil Judge Sr. Division, Ahmednagar in R.C.S. No.40 of 2012 is quashed and set aside and further directions are given against

the appellant/defendant to pay maintenance of Rs.10,000/- p.m. to the plaintiff under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (Parties herein after are referred to as per their original status in the suit).

2. The respondent/plaintiff instituted R.C.S. No.40 of 2012 under section 18 of the Hindu Adoptions and Maintenance Act contending that she married with the defendant on 10.5.1987. Defendant raised quarrel during their cohabitation and consequently defendant left the home. According to the plaintiff, she was harassed by in-laws for want of male child. Since plaintiff was neglected by defendant, she filed criminal M.A. No.14 of 1988 for grant of maintenance, it was allowed, however, later on order has been set aside by the Sessions Court, which is maintained by this Court. Meanwhile, defendant married with one Vimal @ Maya during subsistence of marriage with plaintiff. Out of such marriage, a son and daughter is born. Defendant constantly deserted and neglected plaintiff. He was working as Naib Tahsildar and also holding agricultural land. But failed to provide maintenance to the plaintiff.

3. Defendant resisted the suit, although, he admitted marital tie, making certain allegations against character of the plaintiff, denied claim. Trial Court, relying upon order passed by this Court in previous maintenance proceeding under section 125 of the Cr.P.C. dismissed the suit. However, the appellate Court reversed the judgment and order of the trial court and decreed the suit.

4. Mr.Katneshwarkar, learned senior advocate submit that right of maintenance would not be available to the plaintiff when she herself left matrimonial house. He points out that aforesaid aspects have been dealt with in the proceeding under section 125 of the Criminal Procedure Code wherein this Court held that plaintiff is not entitled for maintenance from the defendant. Mr. Katneshwarkar, would submit that since 24.10.1987 plaintiff never claimed maintenance for last 26 years and now filed present proceeding under section 18 of the Hindu Adoption which depicts her weird conduct. He would therefore, submit that Appellate Court has erroneously recorded finding of desertion against the defendant/husband.

5. Having considered submissions advanced, it can be observed that there is no dispute as to matrimonial relationship between plaintiff and defendant. It is also admitted that defendant contracted second marriage with one Vimal during subsistence of marriage with plaintiff and begotten children. Defendant could not establish his defence that he was deceived by plaintiff or left home at her wish.

6. Learned District Judge rightly held that finding recorded in summary proceeding under section 125 of the Criminal Procedure Code would not pursue Civil Court to take similar view. Proceeding in civil suit are substantive in nature and requires to be decided on elaborate evidence lead by the parties. The learned District Judge referred to the admission of the defendant that he never took care of the plaintiff from the day she left home on 24.10.1987. Apparently, plaintiff had delivered child on 22.10.1987 and residing separately. However, her conduct cannot be considered as willful desertion. Admittedly, defendant had started cohabitation with Vimal and begotten two children. This conduct on the part of the defendant is in fact desertion on his part. Section 18(2) (d) entitles plaintiff/first wife to get maintenance from husband,

once, it is proved that husband has any other wife living. In that view of the matter, finding recorded by the Appellate Court is certainly based on appreciation of evidence. No perversity is shown in the finding recorded by the Appellate Court.

7. In the result, no substantial question of law arises for consideration in this Second Appeal. It sans merit, hence **dismissed.**

(S. G. CHAPALGAONKAR)
Judge

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