

Vasdev Singh v. Miss Parmin Kaur (J. V. Gupta, J.)

the same in the present suit filed after the death of their mother Smt. Pholan. The approach of the courts below in this behalf was wholly wrong, illegal and misconceived, and the plaintiffs were not entitled to any decree challenging the said alienation made by their mother. Consequently, this appeal succeeds, the judgment and decree of the courts below are set aside and the suit is dismissed with costs.

S.C.K.

Before J. V. Gupta, J.

VASDEV SINGH,—Petitioner.

versus

MISS PARMIN KAUR,—Respondent.

Civil Revision No. 1177 of 1987.

June 2, 1987.

Code of Civil Procedure (V of 1908)—Order 33 Rule 3—Application to sue as indigent person—Such application pending—Application for grant of interim maintenance filed—Maintainability of such application—No such objection regarding maintainability raised during trial—Validity of such objection at revisional stage.

Held, that no such objection was taken before the trial Court that the respondent was not entitled to any interim maintenance during the pendency of the application filed under Order 33, Rule 3 of the Code of Civil Procedure, 1908. That being so, the defendant could not be allowed to take this plea for the first time at this stage of the revision petition. (Para 5).

Petition for revision under Section 115 C.P.C. from the order of the court of Shri G. S. Jhaj, P.C.S., Sub-Judge 1st Class, Chandigarh dated the 23rd March, 1987 allowing Rs. 500 per month to the daughter Parmin Kaur as interim maintenance from that day. However, Gurvin Singh, son of the defendant being major is not entitled to any maintenance.

N. C. Jain, with A. C. Jain, Advocates, for the petitioner.

J. S. Sethi and H. S. Awasthy, Advocates, for the respondents.

JUDGMENT

J. V. Gupta, J.

(1) This is an unfortunate dispute between the father and the daughter who has been awarded interim maintenance during the pendency of the suit by the trial Court at the rate of Rs. 500 per month.

(2) Josinder Kaur wife of Vasdev Singh, petitioner along with her daughter Parmin Kaur and her son Gurvin Singh have filed a suit for recovery of maintenance from Vasdev Singh defendant. In that suit, the son and the daughter filed an application for grant of interim maintenance alleging that both of them are college going students and have neither been employed nor have any source of income. Even the wife had no source of income but since she had been granted interim maintenance under Section 125 of the Code of Criminal Procedure, by the Chief Judicial Magistrate, Chandigarh, though the same was not sufficient even to meet her requirements. It was further pleaded that Vasdev Singh defendant is earning Rs. 5,300 per month as Professor in the Punjab Engineering College, Chandigarh, and was living in the Government accommodation in Sector-16, Chandigarh. In these circumstances, they prayed that they be granted Rs. 500 each during pendency of the case. The suit had been filed in *forma-pauperis*. This application was contested on behalf of the defendant, *inter alia*, on the plea that both the said plaintiffs are major and are thus not entitled to any maintenance. Moreover, they are living with their mother and were thus, not destitutes. They have been living with the defendant in a spacious Government accommodation and, therefore, were not entitled to any maintenance. However, the learned trial Court did not allow any maintenance to the son on the ground that he was no more a minor but allowed Rs. 500 as interim maintenance to the daughter, in view of the provisions of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

(3) The learned counsel for the defendant-petitioner vehemently contended that the suit has not so far been registered as the same has been filed in *forma-pauperis* and the application to determine as to whether the plaintiffs are indigent persons or not is still pending adjudication. Thus, argued the learned counsel, till the said application is decided the daughter-plaintiff was not entitled to any interim maintenance. In support of this contention, he referred to

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the judgment of this Court reported as *Dr. Devinder Singh Virk v. Smt. Harminder Kaur* (1). It was next contended that there was no provision for grant of interim maintenance in a suit of such a nature and, therefore, even after the decision of the said application, no such interim maintenance could be granted. In support of this contention he referred to *Ramchandra Behera and others v. Smt. Snehalata Devi* (2) and *Gorivelli Appanna v. Gorivelli Seethamma* (3). It was also contended that since the daughter was no more a minor she was not entitled to any maintenance as such.

(4) On the other hand, learned counsel for the plaintiff-respondent submitted that no such objection was taken at the time of passing the impugned order and, therefore, the defendant could not be allowed to take this objection for the first time at the stage of revision petition. Moreover, argued the learned counsel, the daughter, who is college going student, could not be deprived of the interim maintenance because the proceedings are being delayed unnecessarily in the trial Court. Even the said application could not be disposed of for about two years. According to the learned counsel, even Hon'ble the Supreme Court, in a recent judgment while considering the provisions of Section 125 of the Code of Criminal Procedure, has observed that a wife thereunder is entitled to the interim relief. Reference was made to *Smt. Savitri v. Govind Singh Rawat* (4). He also referred to *Wali Ram Waryam Singh v. Smt. Mukhtiar Kaur* (5), to contend that an unmarried daughter even if she was not a minor but if she was unable to maintain herself was entitled to the maintenance.

(5) I have heard the learned counsel for the parties and have also gone through the case law cited at the Bar. From the impugned order it is quite evident that no such objection was taken before the trial Court that the defendant was not entitled to any interim maintenance during the pendency of the application filed under Order 33 Rule 3 of the Code of Civil Procedure. That being so, the defendant could not be allowed to take this plea for the first time at this stage of the revision petition. Moreover, it has been stated at the Bar that the said application is now fixed for arguments and is likely to

(1) 1983 H.L.R. 465.

(2) A.I.R. 1977 Orissa 96.

(3) A.I.R. 1972 A.P. 62.

(4) A.I.R. 1986 S.C. 984.

(5) A.I.R. 1969 Pb. & Hry. 285.

be disposed of on 28th May, 1987. Copy of the order dated 28th May, 1987 has been filed to show that the said application has now been allowed by the trial court.

(6) As regards the grant of interim maintenance during the pendency of the suit, the matter was settled by the Division Bench of this Court in *Puran Singh and others vs. Mst. Har Kaur and another* (6), wherein it was held that where the marital status is admitted it is the duty of the husband to maintain the wife no matter even if she is not prepared to live with him or perform the conjugal duties. It is another matter if she has become unchaste or has remarried. In that event there is no duty on the husband to maintain her. The matter was referred to the Division Bench because of the controversies between the judgments of various High Courts and, therefore, ultimately it was observed:—

“It also stands to reason that where the marital status is admitted, it is the duty of the husband to maintain the wife no matter even if she is not prepared to live with him or perform the conjugal duties. It is another matter if she has become unchaste or has remarried. In that event there is no duty on the husband to maintain her. So far as the present case is concerned it is admitted that the petitioner and the respondent are married and no plea has been raised that the wife has become unchaste. In this situation it cannot be said that the order of the trial Court granting interim maintenance is without jurisdiction.”

(7) Apart from that, the observations of the Supreme Court, in *Savitri's case* (supra), while interpreting Section 125 of the Code of Criminal Procedure, are also quite relevant in this behalf. It was observed therein:—

“Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case, however, would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who

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may have no means to subsist until the final order is passed."

In this situation such like interim orders passed by the trial Court are not to be interfered within revisional jurisdiction. Consequently, this petition fails and is dismissed with no order as to costs.

S.C.K.

Before J. V. Gupta, J.

JAWAHAR LAL,—Appellant.

versus

MANGU RAM,—Respondent.

Civil Revision No. 1410 of 1979.

June 5, 1987.

Code of Civil Procedure (V of 1908)—Order 26, Rules 8 and 10(2)—Commission issued for local investigation—Report of commission—Objections against report—Maintainability of such objections—Value of report of Local Commissioner.

Held, that there is no provision for filing objections to the reports made by the Local Commissioners after local investigations. Even otherwise, if objections are allowed to be filed to such like reports made by the local commissioners, then there will be no other way to find out the exact position of the site in dispute. The inspection by the local commissioner is made in the presence of the parties. Therefore, the said report is to be ordinarily accepted by the Court appointing the Local Commissioner unless any inherent defect could be pointed out therein. (Para 5).

Petition under section 15(6) of the Haryana Urban (Control on Rent and Eviction) Act, 1973 for revision of the order of Shri Balbir Singh Lather, I.A.S. Appellate Authority under Rent Control Act, Haryana, Gurgaon, dated 6th October, 1976, affirming that of Shri Deep Kishore Singh, H.C.S. Rent Controller, Ballabgarh dated 5th May, 1976 dismissing the application.

M. S. Jain with Adish Gupta, Advocate, for the petitioner.

I. K. Mehta, with Anjali Sehgal, Advocate, for the respondents.