

Bombay High Court

Smt. Laxmi Wd/O Parag Thaware, ... vs Shri Santosh S/O Rajaram Thaware on 23 February, 2021

Bench: A.S. Chandurkar, Nitin B. Suryawanshi

F.C.A. 42-

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FAMILY COURT APPEAL NO. 42 OF 2015

- 1) Smt. Laxmi wd/o Parag Thaware,
(Laxmi d/o Ramesh Dekate)
Aged about 45 years,
Occupation - Nil.
- 2) Ku. Pallavi d/o Parag Thaware,
Aged about 22 years,
Occupation - Student,
- 3) Manthan s/o Parag Thaware,
Aged about 17 years,
- 4) Mayur s/o Parag Thaware,
Aged about 17 years,
Occupation - Student,

(Appellant Nos.3 and 4 being minor
through their Mother Natural Guardian
Smt. Laxmi wd/o Parag Thaware)

All R/o C/o Smt. Shantabai Kawduji
Mendhe, Plot No.94, Lane No.3,
Vishwakarma Nagar, Nagpur

.... APPELLANT

// VERSUS //

Shri Santosh s/o Rajaram Thaware,
Aged about 74 years,
Occupation - Nil,
R/o 414, Hanuman Nagar, Behind
Pragati Hall, Nagpur

.... RESPONDENT

Shri S.P. Kshirsagar, Advocate for appellants.
None for respondent though served

CORAM : A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.

RESERVED ON : 25/01/2021 PRONOUNCED ON : 23/02/2021 F.C.A. 42-2015 ..odt ORAL JUDGMENT: [PER: N.B. SURYAWANSHI, J.]

1. This appeal is filed by the appellants under Section 19 and 22 of the of the Family Courts Act, 1984, challenging the judgment of the Family Court, Nagpur in Petition No. C-25/2012, by which the petition filed by the appellants against the respondent for maintenance was dismissed.

2. Facts leading to this appeal bereft of unnecessary details are as follows:

The appellant No.1 is the daughter in law and appellant Nos. 2 to 4 are the grand children of the respondent. They filed petition under Sections 19 and 22 of the Hindu Adoptions and Maintenance Act, 1956 (for short Act of 1956), claiming maintenance from the respondent contending that the marriage of the first appellant with son of the respondent namely Parag was solemnized on 14/08/1989 under the Special Marriage Act, 1954. From the said wedlock the appellant Nos.2, 3 and 4 were born. The marriage of the first appellant with Parag was against the wishes of their family members. Cases and counter cases were filed by the first appellant and the respondent against each others. Parag-husband of the first appellant expired on 19/01/2000, leaving behind the F.C.A. 42-2015 ..odt appellants. After his death nobody was taking care of the appellants. After the death of Parag though the first appellant tried to reconcile with the respondent he refused to accept her as a daughter-in-law and the appellant Nos. 2 to 4 as his grand children. It was claimed that the respondent had sufficient financial resources however, he had neglected and refused to maintain the appellants. The appellants were constrained to go to the widowed mother of the first appellant, who was then serving as Nurse with Nagpur Municipal Corporation. She maintained the appellants in her meager income till she expired on 03/02/2007. The appellants claimed that they had no source of income and they were unable to maintain themselves. The first appellant being widowed daughter-in-law, second appellant being unmarried granddaughter and third and fourth appellants being minor grandsons of the respondent were entitled for maintenance from him. The details of proceedings pending between first appellant and the respondent were also given in the petition. It was further averred that the second appellant could not pursue her studies after 12 th standard due to paucity of funds. The third and fourth appellants were studying in 8 th standard at that time, in Bishop Cotton School, Sadar, Nagpur till 2010 and were not able to appear for exam as they could not pay exam fees F.C.A. 42-2015 ..odt and school fees. It was further averred that the appellants were living in a rented premises and were unable to pay rent at the rate of Rs.2,500/- per month. They were under a threat of being thrown out for non-payment of rent. The appellants claimed that the respondent was alone and was living a lavish lifestyle. He was having landed property. The late wife of respondent had disposed her agricultural land at Mouze Kalamana and from the sale proceeds, a four storied building was constructed which stood in the name of respondent. He sold two flats in the said building for Rs.40,00,000/-. Further averment was that the late husband of the first appellant had his share in the property situated at Plot No. 414, Hanuman Nagar, Nagpur as the same was a coparcenary property. Hence, the appellants had their share in the said property. It was contended that the respondent was getting pension of Rs.15,000/- per month and was also getting interest of Rs.50,000/- per month on the sale proceeds of the ancestral property and the property of his late wife at Kalamana i.e. Survey No. 14/1 and 14/2 and of the two flats. The respondent had his own house and nobody was dependent on him, on these contentions, the appellants claimed

maintenance at the rate of Rs.5,000/- per month for the first F.C.A. 42-2015 ..odt appellant and Rs. 3,000/- per month each for the appellant Nos. 2 to 4.

3. The respondent appeared and by filing written statement denied the claim of the appellants. He claimed that he did not receive any property from the ancestors. He was a senior citizen aged 77 years, retired from the post of Assistant Engineer from Nagpur Municipal Corporation. He had purchased the field property and house property from his own income and those properties were disposed of long before and there was no property remaining with him. His monthly pension was the only source of income to him. He denied the marriage of first appellant with his son Parag. He claimed that Parag had bad habits and he was addicted to drugs and liquor. He had ousted Parag out of the house due to his bad habits. Parag was not doing any work or earning anything. He specifically denied the averments pertaining to sale of flats, as well as property by his wife Suman and that he was getting income from interests. He therefore claimed that petition filed by the appellants be dismissed.

4. The learned Family Court, after recording evidence dismissed the petition filed by the appellants, hence the present appeal.

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5. Heard the learned counsel for the appellant. Though served none appeared for the respondent. The learned counsel for the appellant strenuously submitted that it is the moral duty of father-in-law to maintain his widowed daughter-in-law and grand children and the respondent can not run away from his duty. He argued that though sufficient evidence was placed on record by the appellants in support of their claim for maintenance, the Family Court has erroneously denied maintenance to them. According to him the impugned judgment of the Family Court was contrary to the settled legal position. In support of his submissions he placed reliance upon decisions in T.A. Laxmi Narasamba Vs. T. Sundaramma and others, reported in AIR 1981 Andhra Pradesh 88, Rajkishore Mishra Vs. Smt. Meena Mishra reported in AIR 1995 Allahabad 70, BS Balbir Kaur and another v. Harinder Kaur and others reported in AIR 2003 Punjab and Haryana 174.

6. Heard the learned Advocate for the appellant at length and perused the record. In view of submissions advanced by the learned Advocate for the appellant. following points arise for adjudication:

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(i) Whether the appellants are entitled for maintenance from the respondent ?

(ii) Whether the Family Court was justified in dismissing the claim of maintenance of the appellants ?

(iii) What order ?

7. To decide the matter it is necessary to consider the evidence on record. The first appellant filed affidavit in lieu of evidence in terms of the pleadings in the petition. She placed on record certified copy of judgment in Misc. Criminal Application No. 25506/2007 (Exh.22) i.e. judgment in application under Section 12 r/w Sections 17 and 20 of the Protection of Women from Domestic Violence Act, 2005 filed by her, which was rejected, Marriage Certificate (Exh.23), Birth Certificates of children (Exhs.24, 25 and 26 respectively), the 7/12 extracts (Exhs. 27 and 28), Mutation Entries (Exhs. 29 and 30), Record of Rights (Exhs. 31 and 32), Property Card (Exh.33), Copy of Ration Card (Exh.34).

In the cross examination, the first appellant admitted that in the year 1993 they lived in the house of the respondent and her relationship with the respondent and his wife became strained from 1993. She had filed case under Section 498-A of the Indian Penal Code against them. She deposed that she was not aware F.C.A. 42-2015 ..odt whether the respondent and his wife were acquitted from that case. She further admitted that she was not staying in the house of respondent at the time of her deliveries. She admitted that Parag had purchased gold ornaments, small necklace, some household items for the second appellant. She also admitted that Parag had not purchased any immovable property. She admitted that Sumanbai wife of respondent died on 18/09/2007. She could not give the source of the funds used for purchasing land Survey No.16 at Kalamana. She also admitted that land mentioned in 7/12 extract (Exhs. 27 and 28) was sold to one Ishant Hatwar in the year 1999. She admitted that father of respondent was a farmer. She deposed that father of respondent had sold out some part of agricultural land and collected the funds for purchasing of house for the respondent. The said fact was informed to her by deceased Parag. She admitted that she had no document to show that the respondent had sold two flats for Rs.40,00,000/- and that he received Rs.50,00,000/- from the sale of lands, so also she had no document to show that the respondent was getting Rs.50,000/- per month by way of interest.

8. Sister of first appellant Kirti, w/o Mangalsingh Randhava was examined as PW.2. She deposed that when she and F.C.A. 42-2015 ..odt her mother asked Late Parag about property, he took them to the agricultural field at Umrer Road, Kalamana and told that it was his ancestral property and he had a share in it. In the cross-examination she deposed that she got married in the year 2005. The parents of Late Parag had transferred their agricultural land in the year 1993. She admitted that the house where respondent was residing belonged to him. She admitted that respondent had one son and three daughters and all the three daughters were married. She also admitted that livelihood of respondent depended on pension.

9. The respondent filed affidavit in lieu of evidence in the line of the written statement filed by him. During cross examination he deposed that the name of his father was Rajaram and his grandfather was Ganpatrao. He denied that Rajaram Ganpatrao owned land at Kalamana and after partition some land was given to his wife. He however admitted that his wife sold out the land. He denied that his son Parag had undivided share in that land. He further deposed that he had not sold out any house property in his lifetime. He stated that the statement made in his affidavit that he had purchased house property and agricultural property from his own earned money was false. He admitted that he was residing on F.C.A. 42-2015 ..odt the ground floor of the four storied house owned by him. He also denied that other floors were let out by him.

10. The marriage of the first appellant with Parag, the deceased son of respondent is proved by filing marriage card (Exh.23). The birth of the appellant Nos.2, 3 and 4 from the said wedlock is also proved by filing birth certificates (Exhs. 24, 25 and

26) respectively. Therefore it is proved that the first appellant was widow of deceased Parag, who was son of the respondent and the appellant Nos. 2 to 4 are his grandchildren. There is no evidence on record that the first appellant was able to work and her deceased parents had left some property for her. It was therefore proved that the appellants were unable to maintain themselves.

11. The appellants have proved on record 7/12 extract Exhs. 27 and 28 of Gut No.16 and the mutation entries Sr. No. 171 and 172 at Exhs. 29 and 30. It shows that land admeasuring 2.62 hectare out of Gut No.16 was sold by late Sumanbai for Rs.3,00,000/-. Remaining land out of the said gut number was also sold for Rs.3,50,000/- in the year 1999. The most important documents proved on record by the appellants were Exhs. 31 and F.C.A. 42-2015 ..odt

32. Vide Exh.31 a partition was effected between late Sumanbai- wife of the respondent and Rajaram (father of respondent) of all properties bearing Nos. 14/1 and 14/2. The property 14/1 stood in the name of Sumanbai and gut No. 14/2 stood in the name of Rajaram. The partition took place on 05/02/1977. Though the appellants could not bring on record as to who was the owner of property gat No. 14/1 before Sumanbai, it was proved on record that property No. 14/2 was owned by Rajaram Ganpatrao Thaware. In view of admission of the respondent in the cross examination that his father's name was Rajaram and his grandfather's name was Ganpatrao, it can be held that property gut No.14/2 was the ancestral property of the respondent.

12. Taking into consideration this evidence we are of the considered view that the property gat No.14/2 was the ancestral property in possession of respondent, in which deceased Parag had a share. It is not the case of the respondent that Parag during his life time or first appellant at any point of time were given share in gat No. 14/2. It is not disputed that the first appellant has not remarried. Admittedly the respondent is retired from the post of Assistant Engineer from Nagpur Municipal Corporation and was F.C.A. 42-2015 ..odt getting pension. In that view the appellants in our considered view were entitled to claim maintenance from the respondent.

13. It is a settled legal position that father-in-law has moral responsibility to maintain the widowed daughter-in-law. In T.A. Laxhmi Narasamba (supra) the Full Bench of Andhra Pradesh High Court held thus ;

"The moral obligation of a father-in-law possessed of separate or self-acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property."

The Division Bench in Madhukar S/o Kisan Lokhande Vs. Shalu wd/o Narendra Lokhande reported in 2013 (6) Mh.L.J.

Page 391 which is authored by one of us (Hon'ble Shri A.S. Chandurkar, J.), it is held that to maintain the widowed daughter-in-law is the legal responsibility of father-in-law. Sections 19 and 22 of the Act create first obligation to maintain a widowed daughter-in-law on the father-in-law. The obligation only shifts on the father of the widow, if the father-in-law prove his inability to maintain her.

14. In the light of above ratio and considering the evidence on record we are of a considered view that the appellants have F.C.A. 42-2015 ..odt proved that respondent held estate/coparcenary property of the deceased Parag and therefore the respondent was under obligation to provide maintenance to the appellants.

15. The learned Family Court has erred in rejecting maintenance to the appellants. The impugned decision is contrary to the settled legal position. The learned Family Court has misread and misconstrued the provisions of Sections 19 and 22 of the said Act and has recorded incorrect findings contrary to the evidence on record. The impugned judgment is therefore liable to be set aside and the petition filed by the appellants for maintenance deserves to be allowed.

16. Considering the status of the parties and the fact that the respondent is a pensioner, we are of the considered opinion that grant of maintenance @ Rs.3,000/- per month to the first appellant and @ Rs.2,500/- to the appellant Nos. 2, 3 and 4 would meet the ends of justice.

17. Hence we pass the following order:

(i) The Family Court Appeal is allowed by setting aside the impugned judgment passed by Family Court No. 2, Nagpur in Petition No. C-25/2012 dated 14/07/2014.

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(ii) Petition No. C-25/2012 filed by the appellants is allowed. The respondent is directed to pay maintenance at the rate of Rs.3,000/- to appellant No.1 and Rs.2,500/- each to the appellant No.2 to 4 from the date of filing of the petition i.e. from 12/04/2012.

(iii) The appellant No.2 shall be entitled for the maintenance till the date of her marriage.

(iv) The appellant Nos. 3 and 4 shall be entitled to claim maintenance till they attain 18 years of age.

(v) The respondent is directed to pay the arrears of maintenance amount to the appellant within a period of eight weeks from today.

(vi) The respondent shall pay cost of Rs.10,000/- of this proceeding to the appellants.

(vii) Decree be drawn up accordingly.

JUDGE

JUDGE

J.Pethe..