

Court No. - 39

Case :- FIRST APPEAL No. - 696 of 2013

Appellant :- Shree Rajpati

Respondent :- Smt. Bhuri Devi

Counsel for Appellant :- J.C.Sharma,Ravindra Kumar Pandey

Counsel for Respondent :- Hitesh Pachori

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. List revised. None appears for the respondent whereas Shri J.C. Sharma, learned counsel for the appellant is present.

2. This is an old appeal. On last date (13.8.2024), matter had been adjourned on the request made on behalf of learned counsel for the appellant. Accordingly, matter was directed to be listed today peremptorily.

3. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the judgement and order dated 22.10.2023 passed by Principal Judge, Family Court, Agra in Original Suit No. 334 of 2024 (Smt. Bhuri Devi vs Shree Rajpati). By that order, with reference to Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as the 'Act'), learned trial court has awarded monthly maintenance at the rate Rs. 3,000/- per month in favour of the respondent and against the present appellant, who is father-in-law of the respondent.

4. Briefly, it may be noted that the husband of the respondent was working as daily wage employee of the Irrigation Department. He suffered death due to murder, on 20.11.1999. The respondent has not been remarried. She also claims to have no source of survival. On the other hand, she pleaded that the amount Rs. 80,000/- was

paid to the appellant by the irrigation department towards terminal dues arising from the death of his son (husband of the respondent). It is her further allegation that the appellant had misappropriated that amount. She claims that the appellant has sufficient agricultural holding to which her husband may have remained entitled, had he been alive. Arising therefrom, claim has been made for the maintenance amount to be paid to the respondent. The appellant objected that no amount was received by him towards terminal dues arising from the death of his son. In fact, the appellant claims that he made a term deposit of Rs. 20,000/- in favour of the respondent. Moreover, the respondent refused to live in her matrimonial home i.e. to live with her matrimonial family. In fact, she went back to her parental family. Then, she engaged as a private househelp. Also, according to the appellant, she is also gainfully employed at K.P.M. Vidyalaya, Kheragarh Rathore Jaitpur Kalan, District Agra.

5. On such objection, the claim for award of maintenance is resisted. Learned trial court has found that the amount Rs. 80,000/- was paid to the appellant towards terminal dues arising from the death of his son. It has been further observed that the said money was not paid to the respondent. Thereafter, learned trial court has disbelieved the claim set up by the appellant that the respondent was remarried to the said Jandail Singh and also disbelieved that the respondent was gainfully employed.

6. In such fact, learned trial court has awarded monthly maintenance at the rate Rs. 3,000/- per month to the respondent from the date of impugned order i.e. 22.10.2013. Upon challenge raised in this appeal, on 5.12.2013, the appeal was entertained and interim order was passed providing for payment of interim

maintenance at the rate Rs. 1,000/- per month. On query made, learned counsel for the appellant states, the amount is being paid.

7. Having heard learned counsel for the appellant and having perused the record, it is true that there was no evidence to accept the contention of the respondent that the appellant had misappropriated the amount Rs. 80,000/-. The case set up by the respondent in her maintenance application was disputed by the appellant at the first stage itself i.e. at the stage of filing objections. The claim made by the respondent in that regard was pressed only on the strength of oral evidence. No documentary evidence was filed by either party, in that regard.

8. At the same time, there is nothing to doubt the claim of the appellant that he had made a fixed deposit of Rs. 20,000/-, in favour of the respondent.

9. Thereafter, there is no evidence as may have made learned court below reach a conclusion or may have persuaded us to reach a conclusion that the appellant was in receipt of Rs. 80,000/- paid by way of terminal dues to him.

10. Submission of learned counsel for the appellant that the respondent was remarried to Jandail Singh or she was living in relationship with him or she was gainfully employed as 'Cook' at K.P.M. Vidyalaya, Kheragarh Rathore Jaitpur Kalan, District Agra, also is unbelievable. Learned trial court has disbelieved the contention made by learned counsel for the appellant in that regard for cogent reasons. Neither the factum of remarriage was proved nor it was admitted. Both the respondent and Jandail Singh were examined. They disputed the claim of their marriage. No doubt emerged in their cross-examination as to that fact as may have

persuaded us to believe the factum of remarriage. Once alleged that fact ought to have proven on the strength of cogent material or evidence. That not done, the objection made by the appellant was rightly rejected. As to the gainful employment of the respondent as 'Cook' at K.P.M. Vidyalaya, Kheragarh Rathore Jaitpur Kalan, District Agra, learned trial court has rightly observed that the document described as certificate issued by the Principal of that college was not proven by the said Principal. In any case, having looked at the document, learned trial court is further right in its conclusion that that certificate was a mute document inasmuch as it did not disclose the monthly income or remuneration payable to the respondent, even if it were to be accepted that she was engaged as 'Cook' in the said educational institution.

11. As to the further submission that the appellant is 70 years old and is himself dependent on his sons, we find, in the first place, by the interim order, sufficient relief had been granted to the appellant and the award of monthly maintenance had been reduced to reasonable amount Rs. 1,000/- per month. Second, it has remained undisputed to the appellant that he has agricultural holding in his name measuring 0.379 hectare. Also, it is not disputed to the appellant that the respondent was duly married to his deceased son.

12. Insofar as further submission has been advanced that the respondent has a house given to her by Jandail Singh, whatever observations exist in the impugned order, we do not find any support from the affidavit to the Jandail Singh. Jandail Singh is shown to have disputed the fact that the respondent is living with him. He has clearly stated that she is living with her father.

13. Seen in that light, the respondent is entitled to the claim of maintenance from the appellant by virtue of Section 19 of the Act.

As to the amount of maintenance, the principle contained in Section 23 of the Act is to be considered. The fact that the widowed daughter-in-law of the appellant was living separately that too with her parent, may not be a circumstance as may disentitle her to claim maintenance from her father-in-law, in entirety. Suffice to note, it is not a mandatory condition of law that for a daughter-in-law to claim maintenance, she must first agree to live at her matrimonial home. In the societal context in which law must be applied, it is not uncommon for widowed ladies to live with her parents, for varied reasons and circumstances. Merely because the lady may have made that choice may neither lead us to the conclusion that she had separated from her matrimonial home without reasonable cause nor that she would have sufficient means to survive of her own. We find, the terms of the interim order passed in these proceedings, do not call for any interference.

14. Accordingly, the appeal is **partly allowed**. The amount of maintenance awarded is reduced to Rs. 1,000/- per month as provided by interim order dated 5.12.2013.

Order Date :- 31.8.2024
Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)