

(1974) 07 KAR CK 0013

In the Karnataka High Court

Case No : Civil Revision Petition No. 2331 of 1973

Chanabasawwa and Another

APPELLANT

Vs

Bhimappa Ramappa Hosmani and Others

RESPONDENT

Date of Decision : 23-07-1974

Acts Referred:

Hindu Adoption and Maintenance Act, 1956 — Section 18

Citation : AIR 1975 Kar 15 : (1974) ILR (Kar) 1517 : (1974) 2 KarLJ 307

Hon'ble Judges : G.K. Govinda Bhat, C.J.; M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : Ranga Reddy, for K.A. Swami, for the Appellant; T.J. Chouta, for the Respondent

Judgement

1. The respondent is the wife of the petitioner. She brought a suit against her husband in O. S. No. 388 of 1973 on the file of the Court of the Munsiff, Chintamani, for maintenance. In that suit, the defendant-husband raised various contentions. He did not dispute that the plaintiff is his wife. In the suit, the plaintiff filed I. A. No. III for making an order granting interim maintenance. The learned Munsiff, after hearing the parties, made an order to the effect that the petitioner shall pay interim maintenance to the plaintiff at the rate of Rs. 75/- per month from the date of the suit. It is against the said order that this revision petition is directed.

2. It was urged by Sri M. S. Gopal, learned counsel for the petitioner, that in a suit for recovery of maintenance the Court has no jurisdiction to order interim maintenance. In support of that contention, he relied on the decisions in Hajee Mahomed Abdul Rahman Vs. Tajunnissa Begum and Another, and Gorivelli Appanna Vs. Gorivelli Setthamma, . Both the decisions are Division Bench decisions. In the Madras case Venkatarama Aiyar, J., while delivering the judgment on behalf of the Bench, stated that the CPC confers certain powers on the Court to grant relief in interim proceedings, such as, for example, power to issue injunctions, attachment be-fore judgments or appointment of receivers;

but apart from such powers, there is no inherent jurisdiction in Courts to grant interim relief which properly ought to be granted only by the decree after determination of the points in controversy; therefore, in a suit for maintenance by the wife where the claim is hotly contested, an order for payment of interim maintenance is without jurisdiction. To the same effect is the decision of the Andhra Pradesh High Court.

3. For the respondent, Miss Pramila learned counsel for the wife, sought support from the judgment of the High Court of Calcutta in *Tarini Gupta Chowdhury Vs. Sm. Gouri Gupta Chowdhury*, where A. N. Ray, J., as he then was, dissented from the view taken by the High Court of Madras and held that the right of a wife to claim maintenance flows from Section 18 of the Hindu Adoptions and Maintenance Act, and that it is not a right under any section of the Code of Civil Procedure. The learned Judge, in paragraph 15 of the judgment said: *Ubi jus ubi remedium*; where there is a right there must be a remedy; the right flows from Section 18 of the Hindu Adoptions and Maintenance Act; if there is a general right under the statute to claim maintenance it follows that also during the pendency of the suit the wife has a right to claim maintenance; the right of maintenance is there because she is the wife; secondly, the right to claim maintenance is being asserted in the suit and thirdly there is a right to claim maintenance till the suit is determined and followed by a decree. If there is a *prima facie* case, the Court can pass orders for interim maintenance. What is meant by *prima facie* case, has been laid down by Lord Evershed, Master of the Rolls, in *Auten v. Rayner* (1958) 3 All ER 566 at p. 568 Lord Evershed has stated that a case which calls for an answer is a *prima facie* case.

4. With great respect I am unable to agree with the view taken by the High Courts of Madras and Andhra Pradesh. I am in respectful agreement with the ratio of the decision of the High Court of Calcutta. In Mulla's Commentary on Hindu Law, 14th Edition, by S. T. Desai, at page 1017, it has been stated that if a *prima facie* case is made out, the Court can, in a case falling u/s 18 of the Hindu Adoptions and Maintenance Act, grant interim relief; the jurisdiction of the Court does not depend upon the acceptance or denial of the relationship or the right by the husband. The decision in *Tarini Gupta Chowdhury Vs. Sm. Gouri Gupta Chowdhury*, has been relied upon by the learned author.

5. In the instant case, the fact that the respondent is the wife of the petitioner is undisputed and therefore, there is a *prima facie* case to be answered. When there is a *prima facie* case, the Court below was right in awarding interim maintenance. Therefore, the first objection raised by the learned counsel for the petitioner fails.

6. The second ground is that the Court below has awarded maintenance at the rate of Rs. 75/- per month and that the petitioner, according to him, is a salesman in a cloth shop getting a salary of Rs. 65/-. Miss Pramila, learned counsel for the wife, drew my attention to the fact that husband was entitled to about 10 acres of agricultural land and he has released his right in the said land

in favour of his father. It apparently looks to me that the release deed was executed in order to deny the wife of her maintenance. The maintenance awarded is a paltry sum of Rs. 75/- per month, which, in these hard days, will be barely sufficient to maintain a human being. The husband is bound to maintain his wife. I cannot also believe that if he is employed as a salesman, he would be working for a salary of Rs. 65/- per month. The order made by the Court below is a just order and if I interfere with such an order, it will be doing injustice.

7. Therefore, this revision petition fails and is dismissed with costs.

8. Revision dismissed.