

(1971) 07 OHC CK 0006

In the Orissa High Court

Case No : M.A. No"s. 201 and 202 of 1966

Padmanav Singh Deo

APPELLANT

Vs

Rajkishori Devi

RESPONDENT

Date of Decision : 05-07-1971

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 18, 18(1), 20, 20A, 21

Citation : (1971) 37 CLT 825

Hon'ble Judges : R.N. Misra, J;B.C. Das, J

Bench : Division Bench

Advocate : D. Mohanty and P.C. Mohapatra, for the Appellant; S.C. Roy, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—These are appeals u/s 21 of The Orissa Estate Abolition Act (1 of 1952) (hereinafter referred to as the Act.) directed against the common decision in two claim cases by the Claims Officer (District Judge) made u/s 20 of the said Act.

2. The Respondent is The step mother of the Appellant and laid claim u/s 18 of the Act for maintenance. There were two separate applications. Misc. Case No. 60 of 1953 was for maintenance subsequent to the date of vesting at Rs. 350/- per month. Misc. Case No. 61 of 1953 was for maintenance from 21-12-1950 to 31-5-1953 (the estate vested on 1-6-1953) at the rate of Rs. 350/- per month. Some other dependents of the ex-intermediary had laid claim for maintenance. All these claims were clubbed together and disposed of by one common order. In these two appeals we are concerned with the claim of the Respondent both for the past and future maintenance. Misc. Appeal No. 201 of 1966 is directed against the order in Misc. Case No. 60 of 1953 while Misc. Appeal No. 202 of 1966 is directed against the order in Misc. Case No. 61 of 1953.

3. It is necessary to state certain facts which do not appear to be in dispute. The

Appellant was the holder of the permanently settled estate of Dharakote in the district of Ganjam. This estate vested in the State of Orissa under a notification u/s 3 of the Act with effect from 1-6-1953. The Appellant became entitled to the estate when he was a minor and, therefore, The estate was put under the Court of wards. On 18-10-1946, the Appellant became major and the estate was thereafter released to him. While the management of the estate was under the Court of Wards, on 1-2-1939 the Respondent's maintenance per month was fixed t Rs. 200/-. On 21-3-1941, the maintenance was enhanced to Rs. 300/- and with effect from 4-1-1945 there was a further enhancement and maintenance per month was fixed at Rs. 350/-. Till June 1948 the maintenance had been paid, but later on the Appellant gave a notice intending to reduce the maintenance on the plea that the income of the estate had dwindled with the introduction of the Orissa Tenants Protection Act whereby the rate of rajbhag paid by the tenant to the landlord was statutory reduced. The Respondent at that stage filed Money suit No. 134 of 1950 for recovery of arrears of maintenance. That suit was decreed with an observation of the learned Subordinate Judge that if the Appellant wanted any reduction in the rate of maintenance he should file a separate suit for the purpose. The Appellant carried F.A. No. 42 of 1952 to this Court which was ultimately dismissed on 26-4-1959.

During the pendency of that appeal the estate vested as already indicated. Within the time provided under the Estates Abolition Act two claim cases were filed as already stated. The Appellant filed a suit to reduce the maintenance and contended that the Respondent would not be entitled to maintenance at more than Rs. 42/- per month. The trial Court held that the Plaintiff's claim for reduction with effect from 1-6-1948 to 20-12-1950 was barred by *res judicata* and the claim was also barred by limitation. He further found that the suit was barred u/s 39 of the Act, but came to hold that the fall of the average income of the estate and birth of two daughters of the Appellant justified the reduction of the maintenance by about one third. The Appellant carried a First Appeal to this Court, the ultimate decision whereof is *Sri Padmanava Singh Deo v. Smt. Rajkishori Devi* 31 C.L.T. 951. In this Court it was held that the maintenance allowance paid to the Respondent was a charge on the estate of the Appellant and quantum of maintenance to which the Respondent was entitled was Rs. 350/- a month. Their Lordships in this Court, however, found that the civil Court had no jurisdiction to go into the matter and the suit was barred u/s 39 of the Act.

4. Before the Claims Officer there were two matters for decision one was the claim for maintenance upto the date of vesting and the other was the claim for maintenance subsequent to the vesting. The Claims Officer accepted the entire claim for past maintenance and held that the Respondent was entitled to a. Sum of Rs. 10,520/- for the period from 21-12-1950 to 31-5-1953 at the rate of Rs. 350/. per month along with interest. In regard to the post-vesting claim for maintenance he, however, held that the maintenance should be Rs. 200/-.

5. Several contentions are raised by Mr. Mohanty for the Appellant in this Court. So far as the claim for arrears of maintenance which is the subject matter of Misc. Appeal No. 202 of 1966 it is contended:

(a) The Claims Officer has no jurisdiction to deal with the question of arrears of maintenance.

(b) The Respondent was not in receipt of monetary allowance in lieu of maintenance on the date of vesting;

(c) The maintenance allowance of the Respondent was not charge on the estate; and,

(d) The amount of maintenance was to be determined by the Claims Officer keeping in view the income of the estate and he should not have adopted the rate of Rs. 350/- in spite of the drastic reduction in the income of the estate.

Mr. Mohanty further contended that the finding of this Court in the case reported in *Padmanav Singh Deo v. Srimati Rajkishori Devi* 31 C.L.T. 951, that the maintenance was a charge is not binding on the parties, become ultimately it was found that the civil Court had no jurisdiction to examine the matter.

6. Each of these contentions of Mr. Mohanty may now (sic) be examined. Section 18 of the Act makes provision for secured creditors and maintenance-holders to file their claims within a specified time from the date of vesting. Sub-section (1) (a) of Section 18, as far as relevant, provides:

Every creditor, whose debt...is a charge on any estate...vested in the State Government u/s 3 ... may, within six months from the date of such vesting or from the date on which creditor is dispossessed under the provisions of Clause (h) of Section 5 or within three months from that date of appointment of the Claims Officer, whichever, date is later, notify in the prescribed manner his claim in writing to a claims Officer to be appointed by the State Government for the purpose of determining the amount of debt legally and justly payable to each such creditor in respect of his claim.

Clause (b) provides,

Every maintenance-holder in an estate succession to which is governed by the law of primogeniture, who is in receipt of a monetary allowance in lieu of maintenance, which is a charge on the estate or part thereof vested in the State Government u/s 3, may within the period specified in Clause (a) notify in the prescribed manner to the Claims Officer in writing his claim for maintenance and the amount of allowance which he is entitled to receive therefore.

Mr. Mohanty contends that Clause (a) has no application to the facts of the present case and Clause (b) by its very terms in prospective, that is, contemplates determination of the claim of maintenance with effect from the date of vesting and not for a period preceding that event. Mr. Roy, on the other hand, wants us to hold that the claim for the pre-vesting period is directly:

covered under Clause (a).

7. The requisites of Clause (a) are:

- (i) The claimant must be a creditor;
- (ii) The debt must be a charge on the estate;
- (iii) The application must be made within the time indicated.

There is no dispute on the question of limitation nor is there any dispute that the Respondent was receiving maintenance from the estate. Future maintenance may not be a debt, but there can be no doubt that maintenance accrued is a debt. The term 'debt' has not been defined in the Estate Abolition Act and, therefore, its ordinary meaning should be adopted. The Oxford Dictionary gives the meaning of the term as "that which is owed or due; anything, such as, money which one person is under obligation to pay or render to another". The claim for post maintenance is, therefore, a debt and since it is owed by the Appellant to the Respondent the Respondent is a creditor in respect of the debt of the Appellant. The first requisite is, therefore, satisfied. We have already referred to the decision of this Court inter-parties that the maintenance was a charge on the estate. Even if there is some force in the contention of Mr. Mohanty that the findings of this Court in the reported decision would not be res judicata as a Court without jurisdiction cannot finally decide matters in dispute, for the reasons indicated in the said decision and the earlier decision of this Court referred to therein and without repeating them here we would hold that the maintenance allowance of the Respondent was a charge on the estate. Thus the second requirement of this clause is also satisfied. It therefore, follows that the claims Officer had jurisdiction to entertain the claim for maintenance for the period preceding the vesting. It is not the case of the Appellant that the claim had become barred by limitation on the date of vesting or even on the date when the claim was laid.

8. Admittedly the Respondent had been receiving maintenance though on the date of vesting maintenance may not have actually been paid. In view of the decisions in the litigations between the parties previously it is not open to the Appellant to contend that maintenance was not being paid to the Respondent.

9. We shall now proceed to examine the contention of Mr. Mohanty that the claims officer should not have overlooked the radical fall in the income of the estate and, therefore, should not have burdened the Appellant with maintenance liability at the old rate of Rs. 350/- which had been fixed when the estate was having large income. There is no dispute that the annual income of the estate for the previous year within the meaning of Section 26 of the Act has been determined to be Rs. 44, 600/- the previous agricultural year, for which the aforesaid income has been determined is the period between 1.7.1951 and 30-6.1952. For the reasons which we shall give in the connected appeal monthly maintenance for the Respondent when the income of the estate was Rs. 44,

600/- would work out to Rs. 40/-. Therefore, for the period from 1.7.1951 the Respondent would also be entitled to only Re. 140/- per month by way of maintenance. It would follow that for the past maintenance the Respondent would be entitled to the rate of Rs. 360/- per month from 21-12-1950 to 30-6-1951 and from 1-7-1951 to 31-5-1953 she would be entitled to maintenance at the rate of Rs. 140/- per month. There was some dispute between the parties about the liability for interest. The claims Officer has awarded interest at 6 per cent. Payment of interest at 6 per cent has been (provided for by the Act and the claims Officer has only followed that provision. We would, therefore, not interfere with the direction regarding payment of interest.

10. The net result of the aforesaid discussion is:

(1) The claim for arrears of maintenance for the period prior to the vesting of the estate is entertainable by the claims Officer;

(2) The Respondent is entitled to maintenance at the rate of Rs. 350/. from 21-12-1950 to 30-6-1951 and at the rate of Re. 140/. from 1-7-1951 to 31-5-1953;

(3) She is also entitled to interest at 6 per cent on the aforesaid amount.

The amount awarded by the claims Officer has, therefore, to be reduced to the aforesaid extent. Misc. Appeal No. 201 of 1966 is partly allowed.

11. We shall now proceed to examine the various contentions in the connected, appeal which deals with the claim for maintenance of the Respondent for the period subsequent to the date of vesting. Some of the objections which were raised in the earlier appeal are also reiterated here, namely, that the Respondent was not receiving a monthly allowance in lieu of maintenance and that the said allowance was not a charge on the estate. In view of what we have already said it is not necessary to notice these contentions afresh. For the reasons already indicated, these contentions are negatived. It would, therefore, follow that the claim made by the Respondent for maintenance was entertainable. The only question that needs examination is the quantum. The claims officer has fixed the quantum of maintenance at Rs. 200/- per month though upon calculation he came to the figure, of Rs. 140/-. The learned Counsel for both sides agreed that the monthly maintenance would work out at Rs. 140/- per month by adopting the process of calculation provided under the statute. The claims officer does not have the powers of the Civil Court to take into consideration hardship, insufficiency of the quantum of maintenance and similar other considerations to enhance the maintenance. On the other hand, he is a creature of the statute and has to work out the claim of maintenance on the basis indicated in the statute. Thus once by the statutory process monthly maintenance works out to Rs. 140/- it was not open to the claims officer to enhance it to Rs. 200/- by saying that amount would be just and proper. We would accordingly hold that monthly maintenance payable to the Respondent with effect from 1.6.1953 would be only

Rs. 140/- per month and not Rs. 200/- as awarded by the claims Officer.

12. Mr. Mohanty raised a further dispute that it was not proper for the claims officer to have only determined the rate of maintenance, but he should have also quantified the claim as a whole. Section 20-A, of the Act provides:

After determining the claim of the creditor or a maintenance-holder u/s 20 the claims Officer shall communicate his award to the compensation Officer concerned.

x x x

The claims officer has communicated to the concerned compensation officer his determination of the rate of the maintenance. It would be open to the compensation officer to quantify the amount and provide for its payment in terms of the Act out of the compensation payable to the Appellant - ex-intermediary. There was no dispute between the learned Counsel for the parties that in calculation of the compensation the method provided in Section 28(1) of the Act would be adopted, that is, on the basis of the annual maintenance of Rs. 1680/- (Rs. 14.0 ? 12) the quantum of total compensation has to be fixed by adopting the table provided in Sub-section 1 of Section 28. That would be a matter of calculation which the compensation officer would certainly do.

Interest on the amount is payable u/s 37(6) of the Act and, therefore, no objection to the direction for payment of interest can also be taken. The statutory interest u/s 37(6) of the Act is payable by the State Government in consideration of the deferred payment of the instalments and the Appellant has no grievance to make against such a direction. Misc. Appeal No. 202 of 1966 is allowed part. The rate of maintenance is reduced from Rs. 200/. to Rs. 140/- per month.

13. As success is divided, we think it proper to direct both the parties to bear their own costs before us as also before the claims Officer.

B.C. Das, J.

14. I agree.