

(1996) 03 OHC CK 0018
In the Orissa High Court
Case No : Civil Revision No. 172 of 1995

Purusottam Mahakud

APPELLANT

Vs

Smt. Annapurna Mahakud and Another

RESPONDENT

Date of Decision : 27-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Hindu Adoptions and Maintenance Act, 1956 — Section 18

Citation : AIR 1997 Ori 63

Hon'ble Judges : C.R. Pal, J

Bench : Single Bench

Advocate : A. Deo, D. Biswal, B.S. Tripathy, P. Panda, D.K. Sahoo and R. Rath, for the Appellant; A.R. Dash, N. Lenka, N. Das and J.M. Sadangi, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Pal, J.—The petitioner calls in question the legality of the order dated 29-6-1995, passed by the learned District Judge, Keonjhar in

Title Appeal No. 25 of 1994 allowing interim maintenance in favour of the opposite party. The relevant facts of the case are as follows :

2. Smt. Annapurna Mahakud, the opposite party before this Court brought Title Suit No. 72 of 1992 in the Court of Civil Judge (Senior Division)

Keonjhar against her husband, the present petitioner, for realisation of a sum of Rs. 43,000/- towards arrear maintenance and cost of construction

of a separate residence claiming maintenance at the rate of Rs. 500/- per month. The defendant while admitting the marriage challenged the claim

of maintenance contending that the opposite party voluntarily left the marital home and refused to come and stay with the petitioner without just

cause. The learned Civil Judge after hearing both the sides found that there was

no ill-treatment to the plaintiff by the defendant and the plaintiff left the house of the husband wilfully and voluntarily to avoid his company without any just cause. Accordingly, he dismissed the plaintiffs suit. The aggrieved plaintiff preferred Title Appeal No. 25 of 1994 before the District Judge. In the appeal, she also filed a petition claiming interim maintenance at the rate of Rs. 500/-per month. The appellate Court after hearing both the sides passed the impugned order allowing her interim maintenance at the rate of Rs. 50/- per month which is now under challenge.

3. Before this Court it is contended on behalf of the petitioner that in absence of any statutory provision recognising the right to interim maintenance

the order passed by the learned District Judge is without jurisdiction and is liable to be set aside. The learned counsel for the opposite party. Thus,

the question which requires determination is whether the opposite party has any right to claim interim maintenance. In the above context, it can be

said that the right of a wife to claim maintenance flows from Section 18 of the Hindu Adoption and Maintenance Act, 1956. The right to claim

interim maintenance in a suit or in an appeal which is a continuation of the suit flows from the substantive right recognised u/s 18 of the Hindu

Adoption and Maintenance Act, 1956. Since no forum is prescribed under the Hindu Adoption and Maintenance Act to enforce the right

recognised u/s 18 of the said Act the only forum available to enforce the said right is the Civil Court where suit can be instituted for enforcement of

the said right and the Civil Court in exercise of its inherent power can grant interim maintenance. Such a view also finds support from the decision

of the Full Bench of this Court in Khadal Penthi Vs. Hulash Dei and Another, wherein it has been held as follows :

When the suit for maintenance is not filed under any of the provisions of the Hindu Marriage Act, 1955 it being a suit of civil nature, the civil Court

has jurisdiction to entertain and try the suit u/s 9 of the Civil P. C; The prayer for interim maintenance cannot be one u/s 24 of the Hindu Marriage

Act which provides for grant of pendente lite maintenance and expenses of the proceeding. No suit is contemplated u/s 18 of the Hindu Adoptions

and Maintenance Act as the said section merely recognised the right of a Hindu wife to be maintained by her husband, which right was also

recognised even under the texts of Hindu Law before enactment of the aforesaid

Act. Her right to be maintained as declared and recognised by

Section 18 of the said Act is an enforceable right which can be enforced in a suit in the Civil Court. There is no express provision in any law or in

the C. P.C. for grant of interim maintenance in a suit for maintenance. In such cases the court would have inherent power to pass such order as

may be necessary to meet the ends of justice.

It is thus a settled position of law that the Civil Court has got inherent jurisdiction to award interim maintenance. Therefore, the order of the learned

District Judge allowing interim maintenance in favour of the respondent cannot be said to be without jurisdiction. The learned counsel for the

petitioner could not show any other irregularity in the impugned order to justify interference with the same in revision. The learned counsel,

however, submitted that for the convenience of both the sides a direction be given to the appellate Court to dispose of the matter expeditiously.

Considering this submission, while dismissing the revision, the appellate Court is directed to dispose of the Title Appeal No. 25 of 1994 within

three months from the date of receipt of the order.

With the aforesaid observations, the Civil Revision is dismissed. Parties are to bear their own costs.