

(2004) 11 DEL CK 0154
In the Delhi High Court
Case No : Suit No. 1225 of 2003

Radhika Narang and Others

APPELLANT

Vs

Karun Raj Narang and Others

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 19, 4

Citation : (2004) 115 DLT 440 : (2005) 1 DMC 40 : (2005) 79 DRJ 274

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Y.P. Narula and Valmiki Mehta and Kirti Singh, Sanjay Ghose and Praveen Chauhan, for the Appellant; Prag Tripathi and Balraj Dewan and Saket Sikri for defendant No. 2, for the Respondent

Judgement

H.R. Malhotra, J.—This is a suit for maintenance and separate residence u/s 9 of the CPC read with Section 18 of the Hindu Adoptions and Maintenance Act. This suit has been filed by the wife against her husband and her father-in-law. Husband has been arrayed as defendant No. 1 whereas father-in-law has been shown as defendant No. 2. Defendant No. 2 made an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that the suit against him was barred as it did not disclose cause of action against him at all. Instead of dealing with this application, this Court passed an order dated 10th December, 2003 framing the following issue:

"Whether plaint does not disclose a cause of action against defendant No. 2 and whether defendant No. 2 is liable to be struck off from the array of parties? OPD"

2. Since parties did not wish to lead any evidence on this issue, it being a legal issue, Therefore, this Court proceeded to hear arguments on this issue.

3. I have looked into the plaint carefully and written statement as also the replication. The father-in-law of the petitioner has been joined as defendant No.

2 primarily on the ground that he is the Karta and the head of the joint family and is liable to maintain and provide for the maintenance of the plaintiffs out of the joint family income and assets which he is controlling jointly with defendant No. 1. It is the case of the plaintiff that all the assets owned by the defendants are the joint property of the joint family and all the companies are family companies but are styled as private limited or limited companies. It is further stated in the plaint that grand-father of the defendant No 2 owned sugar mills which had been the source of funds for the joint family for three generations. There is denial of such averments in the corresponding para of the written statement i.e. para 8. Defendant No. 1 specifically denied about the existence of joint family and defendant No. 2 being Karta of the family. It was stated in the written statement that property so mentioned in the plaint was neither ancestral nor belongs to defendant No. 2. Similarly defendant No. 2 denied such facts.

4. The question before the Court is not if the defendant No. 2 is the Karta of the coparcenaries property and in that capacity if he is under legal obligation to maintain his daughter-in-law or not. The question which needs attention of this Court is if at all the petitioner No. 2 is under any legal obligation to maintain the plaintiff, his daughter-in-law particularly when there is a codified law with special reference to Section 18 and 19 of the Hindu Adoption and Maintenance Act. Though plaintiff in the suit has termed the defendant No. 2 as Karta of the corporationary property and defendants 1 and 2 have denied the same but that is not the question before the Court to decide if he is Karta or not. Focus is on the liability of defendant No. 2 to maintain his daughter-in-law even though he is held to be Karta of corporationary property. True the uncoded law fastened the liability of the father-in-law to maintain the defendants including his daughter-in-law but now since there is a codified law Therefore in view of Section 4 of the Hindu Adoption and Maintenance Act, the Court has to determine if uncoded law shall still have recognition..

5. I have heard learned counsel for the plaintiffs, learned counsel for the defendant No. 1 and also the counsel for defendant No. 2 on this issue. It was urged by learned counsel for the plaintiffs that the plaintiffs have a right to claim maintenance under Customary Hindu Law as defendant No. 2 is the holder of ancestral property being the Karta of corporationary company and thus he is under obligation to maintain the plaintiffs out of such corporationary properties. He further urged that the obligation of the husband to maintain his wife u/s 18 of the Hindu Adoption and Maintenance Act is a personal obligation whereas obligation of the Karta of the family flows from the customs which have been in existence since ages and those customs and usage according to the learned counsel for the plaintiffs do not cease to exist by enactment of the Act, viz, Hindu Adoption and Maintenance Act. It was further contended that Section 19 of the Hindu Adoption Act does not in any manner exclude the existing rights available to Hindu women. To support such contention he referred to Mullah on Hindu Law 18th Ed. Vol. I Page 877 and 878 where he discussed the liability of the Manager towards dependence. It read as under:

"The manager of a joint mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children. On the death of any one of the male members, he is bound to maintain his widow and his children. The obligation to maintain these persons arises from the fact that the manager is in possession of the family property."

6. He also placed reliance on an authority reported in Maharashtra Law Journal 1977 Page 402 to show that the obligation to maintain arises from the fact that the Manager is in possession of the family property. He also referred to another authority reported in 1977 Maharashtra Law Journal page 406 of Full Bench and also yet another authority on the aspect of Order 7 Rule 11 CPC.

7. Former two authorities deal with the import of codified law and uncoded law. True, the aforesaid two authorities particularly the later authority deals with Section 4 of Hindu Adoption Act. Their Lordships while dealing with Section 4 of the Hindu Adoption and Maintenance Act observed that though radical changes have been brought in the prior law and Section cut codifying does not however altogether obliterate the old law. From the perusal of Section 4 it follows that with respect to matters for which provision is made in the Act, the prior law ceases to have effect to the extent laid down in that section. As an inevitable corollary it also follows that in respect of matters for which no provision is made in the Act the old law must continue to remain applicable."

8. Though the learned counsel for the plaintiff has tried to take benefit of this judgment but in fact it goes against the plaintiffs as there is express provision now in the Hindu Adoption and Maintenance Act which deals with the cases of maintenance and residence for wife. Sections 18 and 19 are the provisions incorporated in the statute in explicit terms. Therefore by virtue of insertion of Section 4 in the statute, all customary laws prior to coming into force of this Act, shall cease to have effect and what is inserted in the statute shall prevail and not the customary laws. I am impressed by the arguments of learned counsel for the defendants 1 and 2 that if a particular provision of law is capable of being given its literal meaning, that should be accepted and not its interpretation particularly when the words used are so unambiguous that no interpretation in fact is required for construing meaning. He urged that plain reading of Section 18 makes it more than clear that it is only the husband who has an obligation to maintain his wife and none else. He further urged that the underlying idea of enacting of Section 18 and 19 of Hindu Adoption Act was that during the lifetime of the husband, he shall be under legal obligation to discharge his duties towards his wife for the purpose of maintenance and only after his death his father shall maintain his daughter-in-law. Section 19 rather makes a further ride on the aspect of maintaining his daughter-in-law. It has further been limited to the extent that if she was unable to maintain herself out of her own earning only then her father-in-law would be under legal obligation to maintain her. This section further goes to the extent that her father-in-law shall only be liable to maintain her if she has no other property from the estate of her husband or her

father or mother or from her son or daughter. Reading of Section 18 and 19 indicates that at first instance, it is the husband who is under legal obligation to maintain his wife of course subject to exceptions as provided in Clause 2 of Section 18 and after the death of her husband her father-in-law shall maintain her not in absolute terms but subject to the condition that she is unable to maintain herself out of her own earnings or other properties. That goes to show that even after the death of her husband firstly she has to maintain herself out of her own earnings from the property and if she is not able to do that only then her father-in-law's obligation starts. If that is the spirit of these two provisions how can father-in-law at the first instance be asked to maintain his daughter-in-law when the husband is alive.

9. To sum up provisions of Sections 18 and 19 of the Act are so plain, clear and unambiguous that literal meaning as provided in these two provisions are to be given as described plainly in the two provisions. Secondly in view of Section 4 of the Act the old customary law in existence prior to coming into force of this Act cannot be made applicable to the present case it being governed by codified law and Therefore question of defendant No. 2 being Karta or his obligation to perform his duties as Karta do not arise in this case.

10. For these reasons I have no hesitation in holding that defendant No. 2 is neither a proper party nor a necessary party and that defendant No. 2 has been improperly joined and Therefore no cause of action can be said to have arisen against defendant No. 2 and as such this issue is decided against the plaintiff and in favor of defendant No. 2. Ordered accordingly.