

(2010) 07 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5793 of 2010

S.D. Manjunath

APPELLANT

Vs

Niveditha (Nethu), Jyothsna and Master Shabarish all are
Children of S.D. Manjunath and Savitha rep. by Smt.
Hemavathi (Grand Mother)

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Hindu Adoption and Maintenance Act, 1956 — Section 20

Citation : (2010) 07 KAR CK 0062

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : G. Shankar, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—Sri G. Shankar, learned Counsel appearing for the appellant neither knows the facts of the case nor is conversant with the legal provisions which are relevant for the purpose of conducting the appeal.

2. We find this position reflects a very sorry state of affairs in the legal profession and in matters involving lives and the day to day living of parties, arising as a family dispute before courts, though the legislature had taken care to provide for suitable statutory provisions not to make appearance of lawyers as a matter of right, that provision having been diluted, courts have as a matter of course allowed lawyers to appear to plead the cause of the litigants who are parties in family disputes of the present nature.

3. We find that the appeal is by the father who had failed and neglected to maintain his three minor children after unnatural death of the mother - wife of the appellant in mysterious circumstances and in respect of which incident, the appellant himself stands as accused before a criminal court.

4. In a matter of this nature, when the court below has in a suit filed by the maternal grandmother on behalf of the children, the plaintiffs as next friend and

guardian, u/s 20 of the Hindu Adoption and Maintenance Act, has decreed the suit for granting maintenance of Rs. 5.000/- per month to each of the child as against Rs. 10,000/- claimed by the plaintiff's, the defendant in the suit is in appeal before this Court and it is not even known as to whether the decree passed in the suit filed in the year 2005 and Judgment rendered on 29.7.2009, is being complied with or not by the present appellant who has suffered the decree.

5. It is also to be noticed that the appellant had once earlier tried his hand to get custody of the minor children by instituting G & WC No. 3 of 2005 and in such proceedings the court had passed an interim order, directing the present appellant: to pay maintenance at the rate of Rs. 1,500/- per month to each of the child and it is not known as to whether that maintenance was paid or not and obviously as it is not paid, the suit had been filed by the maternal grandmother who was taking care of the children.

6. In a matter of this nature, we find that there is absolutely no bona fides on the part of the present appellant in filing an appeal to get over the Judgment and decree which even otherwise does not appear to be suffering from any legal infirmities.

7. The only submission made by Sri Shankar learned Counsel for the appellant is that the parties have settled the matter and therefore in order to enable the parties to report settlement, this Court should issue notice to the respondents - plaintiffs in the suit.

8. We are least impressed by the submission made. More so, when learned Counsel for the appellant does not even know the facts of the case nor developments in the case and it is not even known as to what kind of settlement has been arrived at except for making such submission at the Bar, which is not borne out on record.

9. Submission at the Bar by a lawyer does not substitute for the evidence of the parties in any proceedings.

10. It is rather unfortunate that lawyers of late have been performing the role of witnesses and even reducing themselves to the status of litigants and substituting evidence through submissions, which is not their role.

11. We strongly deprecate such tendencies in the Bar. A Lawyer should remain a lawyer and true to his profession. make a proper study of facts of the case, look up the law and make proper submissions at the Bar, to ensure relief to his client, which is available to his client as provided for in law, through the system of the courts.

12. This is seldom done nowadays and it is a very sad reflection on the performance levels of the members of the Bar.

13. In such circumstances, we are inclined to seek the assistance of a competent Advocate with sufficient experience in life and in the profession who alone can

handle such matters involving family disputes.

14. However, keeping that option open, we permit, the present Advocate appearing for the appellant to place before the court the details of maintenance that, the appellant has paid in favour of his minor children hitherto and also to deposit a sum of Rs. 10.000/- by way of litigation cost payable to the respondents to demonstrate bona fides of the appellant.

15. The particulars to be placed and deposit to be made within a week's time from today.

16. List this matter for orders on 26.7.2010.