

(2010) 10 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No's. 17284 and 27711 of 2010

Sri Shanthraja Reddy

APPELLANT

Vs

Smt. M.S. Shashirekha
 M.S. Shashirekha Vs Sri
Shantharaju Reddy

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Hindu Marriage Act, 1955 — Section 24

Citation : (2010) 10 KAR CK 0043

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Harish H.V., in W.P. No. 17284/2010 and G.S. Venkat Subbarao, in W.P. No. 27711/2010, for the Appellant; G.S. Venkat Subbarao in W.P. No. 17284/2010 and Harish H.V. in W.P. No. 27711/2010, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Smt. Shashirekha/Plaintiff, has filed writ petition No. 27711/2010 being aggrieved by the order dated 19.04.2010 passed on I.A. No. 2 in O.S. No. 208/2009. Sri Shanthraja Reddy/Defendant, has questioned the said order by filing writ petition No. 17284/2010. For the sake of convenience, the parties would be referred to with reference to their rank in the suit.

2. Plaintiff married Defendant's son Mr. Lokesh on 05.05.2002. Plaintiff's husband died on 25.01.2004, leaving behind the Petitioner and minor child Master Mourya. Plaintiff and Defendant are residing separately. Plaintiff filed suit against the Defendant to pay maintenance of Rs. 8,000/- per month during her life time and to provide shelter for her residence in the suit schedule property by creating a charge over the same and for consequential reliefs. Defendant filed written statement and denied the claim of the Plaintiff. Plaintiff filed I.A. No. 2 u/s 151 of CPC read with Section 24 of Hindu Marriage Act, to pass an order against the Defendant to pay interim maintenance at Rs. 5,000/- p.m. till the

disposal of the suit and litigation expenses of Rs. 10,000/-. Defendant filed his statement of objections. The trial court upon consideration, has allowed I.A. No. 2 in part, entitling the Plaintiff for interim maintenance of Rs. 2,000/- per month from the date of filing of suit till its disposal and for further sum of Rs. 6,000/- towards litigation expenses, from the Defendant. The Defendant was made liable to pay interim maintenance amount on or before 5th day of every month and to pay litigation expenses within one month from the date of the order. Both parties being dissatisfied, have questioned the said order.

3. Heard Sri G.S. Venkat Subba Rao, learned Counsel appearing for the Plaintiff and H.V. Harish, learned Counsel appearing for the Defendant and perused the writ petition papers.

4. Indisputedly, the Plaintiff as the mother and natural guardian of Master Mourya @ Manoj Kumar, has instituted O.S. No. 51/2006 on the file of Civil judge (Sr. Divn.) & JMFC, Madhugiri, against the; Defendant and another for the relief of partition and separate possession claiming ? share in the suit schedule properties. The properties in the said suit and the instant suit are one and the same. I.A. No. 3 was filed in O.S. No. 51/2006 to grant interim maintenance of Rs. 5,000/- per month by the 1st Defendant/M. Shantharaja Reddy. The application having been contested, an order dated 17.09.2007 was passed to pay interim maintenance of Rs. 2,000/- per month to the minor Plaintiff. The said order was questioned by the Defendant in W.P. No. 19313/2007. It was found that, the interim alimony has been worked out without there being any details of actual income from the properties in the hands of the 1st Defendant. Since the order impugned in the writ petition was a discretionary order, the writ petition was dismissed, directing the trial court to dispose of the suit expeditiously. The time allowed has expired long ago. Learned Counsel on both sides submit that, the suit is still pending. The trial court ought to have disposed of the suit within the stipulated time and if it could not try and dispose of the suit, ought to have sought extension of time. Though appropriate action in the matter is called for, I refrain, from initiating any action, with a fond hope that, immediate steps will be taken to implement the direction.

5. Indisputedly, the Plaintiff has not produced any material with regard to the income received by the Defendant from the suit properties. The Defendant has the liability to pay interim maintenance to Master Mourya @ Manoj Kumar in terms of the orders passed on I.A. No. 3 in p.S. No. 51/2006.

6. In the circumstances, the amount of Rs. 2,000/- ordered to be paid to the Plaintiff as interim maintenance, cannot be termed as meager. In the absence of proof of income from the suit properties and keeping in view the liability towards the Plaintiff in terms of the impugned order, as well as to her son, noticed supra, no case is made out by the Plaintiff to grant any enhanced maintenance amount.

7. I do not find any merit in the case of the Defendant against the impugned order. The Defendant also has not placed the statement of account of the income

from the suit properties. In the circumstances, it is not open to him to question the impugned order.

For the foregoing reasons, both the writ petitions shall stand dismissed.

However, the trial court is directed to try and dispose of the suit expeditiously. Keeping in view the provisions under Karnataka (Case Flow Management in Sub-Ordinate Courts) Rules, 2005, since the pleadings of the parties are complete, the trial court is directed to try and dispose of the suit within a period of 8 months from the date a copy of this order is placed on its record by either of the parties.

In order to facilitate the early trial and disposal of the suit within the said period, the Plaintiff is directed to adduce and complete her side of evidence within a period of two months from the date the suit is posted for trial. The Defendant shall adduce and complete his side of evidence within a period of two months from the date the Plaintiff closes her side of evidence. The trial court is directed to dispose of the suit as early as practicable and at any event, within a period of two months from the date the trial of the suit is completed.

Parties are directed to extend ready co-operation to the trial court for trial and disposal of the suit within the time frame.

In the circumstances of the case, the parties are directed to bear their respective costs.