

(1958) 02 MP CK 0016
In the Madhya Pradesh High Court
Case No : First Appeal No. 14 of 1952

Tikaram Pratap Singh and Others

APPELLANT

Vs

Narayan Singh and Others

RESPONDENT

Date of Decision : 04-02-1958

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 20, 21, 22, 4

Citation : AIR 1958 MP 231 : (1958) JLJ 442 : (1958) 3 MPLJ 338

Hon'ble Judges : M. Hidayatullah, C.J.;B.K. Choudhari, J

Bench : Division Bench

Advocate : R.K. Pande, for the Appellant; J.P. Dwivedi, for the Respondent

Judgement

The judgment in this appeal shall also govern the disposal of First Appeal No. 24 of 1953.

These two appeals arise out of a common judgment and have been filed respectively by the defendant and the plaintiffs in the suit. Arjunsingh, the original defendant, died during the pendency of both the appeals, and his legal representatives have been substituted for him in the two appeals.

The suit was filed by Arjunsingh's three illegitimate sons, claiming arrears of maintenance for three years prior to the date of suit (16-6-1947), a declaration that they were entitled to maintenance at Rs. 200 per month, and a charge to be created upon the separate property of Arjunsingh. In the Court below the claim for maintenance was decreed, but it was ordered at the rate of Rs. 30/- per month, with arrears for three years prior to the date of the suit.

Both the parties were dissatisfied with the judgment and appealed against the decree. The plaintiffs claimed maintenance at the rate of Rs. 200/- per month, and also appealed against the award of costs against them which involved payment of court-fee inasmuch as they had been allowed to sue as paupers. The defendant in his appeal asked for the reversal of the judgment and decree of the Court below and dismissal of the suit.

The vital question which often arises in such cases, viz., the question of illegitimate paternity, does not fall for our consideration, because it was conceded before us that Arjunsingh admitted that the three plaintiffs were his illegitimate sons. It was also admitted that before they became major Arjunsingh was paying maintenance under an order of the criminal Court. When the present suit was filed, the three illegitimate sons were all major, being between 29 and 24 years of age at that time.

In P. A. No. 14 of 1952 the defendant contended that the plaintiffs were not entitled to any maintenance (a) because of their disobedient attitude, (b) because of their being employed and able to earn their own maintenance, and (c) because of the passing of the Hindu Adoptions and Maintenance Act, 1956 (No. 78 of 1956) (hereinafter called the Act). In First Appeal No. 24 of 1953 the plaintiffs contended that they were entitled to maintenance at the rate at which they had claimed and that the decree of the trial Court wrongly disallowed them maintenance at that rate. They also raised the question of costs.

We shall leave over from consideration the applicability of the Act to the present case and deal with the other matters first. In so far as the contention of the defendant is concerned that the plaintiffs were not entitled to maintenance because of their disobedient conduct and the fact that they were able to earn their maintenance, we have only to say that this aspect of the case was not pleaded by the defendant in the written statement and that no specific issue was framed on it.

We note further that even in the grounds of appeal there is no mention of this, and the argument, it appears, has been constructed mainly on a reading of the evidence which was led in support of the quantum of the maintenance to be fixed. We, accordingly do not feel called upon to decide these points.

As regards the quantum that has been fixed in the Court below, we have looked into the evidence led in the case. One of the plain-tills admitted that he was earning his own livelihood and was able to maintain, himself out of what he earned. He said the same thing about the others. In other parts of the evidence it is shown that one of the plaintiffs was a postman at one time, but nothing definite was stated as to what he was doing at the time of the filing of the suit.

With regard to the third plaintiff, it was pointed out that he had once a small shop. But there is nothing to show in the record of the case whether the shop was in existence when the suit was filed. The rule of Hindu law is that an illegitimate son is entitled to maintenance. That rule was laid down by Yajnavalkya and has been consistently applied in India.

It may be regarded as based on a text or at least on a usage or custom having the force of law. Under the original text of Yajnavalkya the plaintiffs were therefore entitled to maintenance, though, as has been pointed out by the learned Judge of the Court below, not on the same scale as that of a Hindu female or a legitimate son. Bearing these matters in mind, we approach the

question of the fixation of the quantum.

The learned Judge of the Court below does not appear to have taken into account the extent of the property, which has been described to us as 230 acres of land. He has fixed Rs. 10/-per month per plaintiff as the maintenance allowance to as paid to them. Looking to the circumstances of the family and the number of persons which it had to support, we think that the fixation of Rs. 10/- per month per plaintiff errs on the strict side.

It is common knowledge that money has lost some of its purchasing power, and Rs. 10/-per month per plaintiff is, as the learned Judge of the Court below described, almost nominal maintenance. The purpose of granting maintenance is not to make the illegitimate sons live entirely upon the maintenance allowance and do nothing to earn their livelihood.

Where there is evidence, as here, that the claimants for maintenance are earning their own livelihood, the maintenance allowance need not be at a high figure; but still, as belonging to the family, albeit illegitimately, they are entitled to maintenance reasonable in the circumstances of the case. Regard being had to the position of the family and the number of persons it consists of, we think that the award of Rs. 10/- per month per head as maintenance is not proper. We increase the maintenance allowance to Rs. 15 per month per person.

This brings us to the question whether the Act disbars the illegitimate sons from claiming maintenance at all. The Act was passed to amend and codify the law on the subject. It came into force on 21-12-1956. It repealed the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, and Sub-section (2) of Section 30 of the Hindu Succession Act, 1956.

It, however, contained a saving clause in Section 30, which was applicable only to cases of adoption and did no more than bring out the effect of Section 6 of the General Clauses Act. In other respects it was an overriding law, and the overriding provision is to be found in Section 4 of the Act. It reads as follows:

"Save as otherwise expressly provided in this Act,--

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act:

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

It was contended that in the absence of any saving in favour of pending litigation the effect of Section 4 is to negative the right to maintenance of the present claimants. Reference is made in this connexion to the provisions of Ss. 20, 21 and 22 of the Act, which lay emphasis upon the fact that no illegitimate son is entitled to maintenance if he has attained the age of 18 years.

The definition of "dependent" in Section 21 for the purpose of Chapter III clearly shows that, after the enactment of the Act at any rate, no dependant is entitled to maintenance contrary to the provisions of the Act, and that in so far as illegitimate children are concerned they are entitled to maintenance only during their minority. To that extent the provisions are quite clear. It means, therefore, that under the Act there can be no claim to maintenance by illegitimate children when they have attained the age of majority.

It was contended that that being the case the present claim of the plaintiffs must fail because they were major when the suit was filed. This involves, in our opinion, the consideration whether Section 4 of the Act must be regarded as retrospective, either by express provision or clear implication. The words there are "any text etc. shall cease to have effect with respect to any matter for which provision is made in this Act".

The words are clearly prospective and show that from the date of the passage of the Act the rights, emanating from any text or rule etc., were no longer to be considered and only the Act was to be the guide. Similar is the provision in Clause (b) of Section 4, where the words are once again "shall cease to apply to Hindus".

The law being prospective by clear language cannot impinge upon the rights which existed before. There is no provision in this connexion to show that pending litigation was affected, except in so far as the right to claim maintenance after 21-12-1956 was concerned. We are clearly of the opinion that the words of Section 4 cannot be given any retrospective effect to cover pending cases, except as stated above, because there are no words to that effect, nor does the same result follow by necessary implication.

We accordingly hold that the right to maintenance ceased in the case of adult illegitimate children on 21-12-1956, before which the text or rule or interpretation of Hindu law or any custom or usage as part of that law in force would govern the issue. Applying this, therefore, to the facts of the case, we consider that the present suit was not barred and that the right to claim maintenance, at any rate up to 20-12-1956, was existing.

We need not say more than this, because as we look at the plaint we find that the plaintiffs in the suit claimed maintenance only for three years prior to the filing of the suit. They asked only for a declaration in respect of maintenance after the institution of the suit. In this view of the matter, we are satisfied that the claim to past maintenance for three years prior to the filing of the suit cannot be resisted, either under the law as it stood before the passing of the Act or even thereafter.

This leaves over for consideration the Question of costs and court-fee. The plaintiffs, both in, the suit and in the appeal which they filed, were permitted to sue in forma pauperis. In the Court below they were saddled with costs and were also ordered to pay the necessary court-fee.

There was the usual direction to the Collector. The learned counsel for the appellants in the later appeal contends that the defendant should be ordered to pay the court-fee. We do not think that that is proper. It is however in the fitness of things that we should apportion the costs in proportion to the success and failure in the Court below. The plaintiffs and the defendant filed cross-appeals involving practically the same amount.

We feel that in view of the very partial success of one of the appeals and the total failure of the other appeal the costs of these appeals should be as incurred.

That leaves over the question of costs in the trial Court. We order proportionate costs in the Court below, excluding the court-fee. With regard to the recovery of the court-fee, we think that the amount of court-fee should be apportioned between the plaintiffs and the defendant according to the claim and the success therein, the plaintiffs paying the necessary court-fee in respect of the claim disallowed and the defendant paying the court-fee in respect of the claim allowed.

The court-fee will be calculated on the plaintiff's claim and apportioned on the basis of the success and failure in the two Courts with the difference that declaration will be valued for purposes of court-fee for 9 1/2 years instead of 10 years.

The result, therefore, is that F. A. No. 14 of 1952 is dismissed with no order about costs and P. A. No. 24 of 1953 is partly allowed, increasing the maintenance allowance for the three years prior to the suit to Rs. 45/- per month instead of Rs. 30/- per month ordered in the Court below, with proportionate increase in the total amount of arrears for the three years prior to the suit but no order about costs. The court-fee shall be recovered in proportion to the success and failure from the rival parties and the direction to the Collector shall be amended suitably.