

(2017) 07 AHC CK 0010
In the Allahabad High Court
Case No : 194655 of 2017

Upendra Singh @ Omji

APPELLANT

Vs

Abbyan Singh @ Kanhaiya & Others

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Family Courts Act, 1984, Section 19 -
Appeal
Hindu Adoptions and Maintenance Act, 1956, Section 20 - Maintenance of children and aged parents

Citation : (2017) 07 AHC CK 0010

Hon'ble Judges : Dilip Gupta, Amar Singh Chauhan

Bench : Division Bench

Advocate : Mridul Kumar

Judgement

1. The appellant Upendra Singh @ Omji, has preferred this First Appeal under Section 19 of the Family Courts Act against the judgment and order dated 26 September 2016 passed by the Principle Judge, Family Court, Jalaun at Orai in Original Suit No. 26 of 2014 (Abbyan Singh and another v. Upendra Singh and another) whereby the court below has awarded Rs. 3,000/- per month for medical expenses and Rs. 1,000/- per month for maintenance to Abbyan Singh (respondent no. 1).

2. The brief facts which are requisite to be stated for the adjudication of the present appeal are that a regular suit was filed under Section 20 of the Hindu Adoptions and Maintenance Act for getting maintenance of their minor son (respondent no. 1) claiming Rs. 7,000/- per month, who is residing with respondent no. 2, Smt. Poonam Raje. It is averred that marriage of respondent no. 2, Smt. Poonam Raje was solemnized with appellant Upendra Singh @ Omji on 17 November 2010 according to Hindu rites and rituals, and out of the said wedlock, one male issue namely Abbyan Singh @ Kanhaiya was born, who is 18 months old at present. Unfortunately, he is suffering from heart disease and there is shrinkage and hole in the valve of his heart. The appellant did not

provide him the medical treatment. Respondent no. 2, who is teacher in a school, however managed to give treatment but the expenses are very high and cannot be afforded by her. The appellant is doing business and he possesses Tractor, Scorpio, used taxi, J.C.B. Machine and also agricultural land from which his annual income is more than Rs. 13 lakhs and, therefore, the respondents seek relief for grant of maintenance and lastly prayed that defendant be directed to give Rs. 7,000/- per month in lieu of maintenance, treatment and education of their minor son.

3. The defendant filed a written statement and pleaded inter alia that he has paid Rs. 2,50,000/- for the medical treatment of respondent no. 1; that respondent no. 2 left his house without any reason and also used to under estimate him; that respondent no. 2 is teacher and earning Rs. 35,000/- per month and her father is a rich person and business-man who possesses agricultural land also.

4. On the basis of the pleadings of the parties, following issues were framed by the Principal Judge, Family Court:- a. Whether the respondent no. 1 is entitled to get maintenance?

b. Whether the respondent no. 1 is entitled to get some money for treatment after creating charges of the property of the appellant?

5. The Principle Judge, Family Court, Jalaun at Orai, after hearing the parties and perusing the records, partly decreed the suit. The appellant was directed to give Rs. 3,000/- per month towards medical expenses and Rs. 1,000/- per month in lieu of maintenance and education of the minor son i.e., respondent no. 1.

6. Before adverting to the claim of the parties, it is necessary to reproduce Section 20 of the Hindu Adoptions and Maintenance Act:- "20. Maintenance of children and aged parents - (i) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(ii) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(iii) The obligation of a person to maintain his or her aged infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."

7. In this appeal, the main point of determination is that whether the appellant is under a legal obligation to maintain respondent no. 1 who is the legitimate son of appellant and suffering from heart disease. It has come in the evidence that appellant is a business-man who possesses Tractor, Scorpio vehicle, J.C.B. Machine and also agricultural land. Therefore, he is able to provide medical expenses and maintenance. "Maintenance" includes provision for food, clothing, residence, education of the children and medical attendance or treatment. The Supreme Court in the case of State of Haryana v. Smt. Santra, AIR 2000 SC

1888 held that a Hindu is under a legal obligation to maintain his wife, minor son, unmarried daughter and old aged parents, whether he possesses any property or not. The obligation to maintain these relations is personal, legal and absolute that arises from the very existence of the relationship of the parties.

8. Section 20 of the Hindu Adoptions and Maintenance Act gives statutory form to the legal obligation of a Hindu also to maintain his minor son and his aged or infirm parents. The appellant cannot escape liability by raising plea that respondent no. 1 is living with respondent no. 2.

9. The impugned judgement, which has considered the various aspects in detail, does not call for any interference.

10. The appeal, therefore, liable to be dismissed and is dismissed.