IN THE HIGH COURT OF JUDICATURE AT PATNA

Kalawati Devi

vs.

Mohan Prasad Gupta and Another

Miscellaneous Appeal Number 1049 of 2018

25 September, 2023

(Hon'ble Mr. Justice P. B. Bajanthri and

Hon'ble Mr. Justice Arun Kumar Jha)

Issue for Consideration

Whether judgment and decree passed by the learned Principal Judge, Family Court, Aurangabad in Matrimonial Suit No.09 of 2011 is correct or not?

Whether the learned Family Court can pass an order for maintenance or entitlement of maintenance in favour of the respondent no. 2 in the absence of pleadings of the parties?

Headnotes

Family Courts Act, 1984—Section 7—Hindu Adoptions and Maintenance Act, 1956—Section 20—appellant has been living in the house of the respondent no.1 where he has been living with his first wife and children—appellant herself admitted that the respondent no.1 was married before solemnizing the marriage with her and the respondent no.1 has got six sons and three daughters from his first wife.

Held: a suit can be brought for declaration of matrimonial status of any person, respondent no.1 was within his right to bring the suit for declaration that the appellant was not his wife—in a plethora of the decisions, the Hon'ble Supreme Court has held the illegitimate children are also entitled to get maintenance and the learned Family Court had not committed any error if it went to declare the entitlement of the respondent no. 2 for getting maintenance from the respondent no.1—learned Family Court not went beyond pleadings and passed the orders—appeal dismissed.

(Paras 14, 16, 18, 22)

Case Law Cited

Savitaben Somabhati Bhatiya vs. State of Gujarat and Ors., reported in (2005) 3 SCC 636—**Relied Upon.**

Bachhaj Nahar vs. Nilima Mandal, AIR 2009 SC 1103**—Referred To.**

Badshah vs. Urmila Badshah Godse and Another, (2014) 1 SCC 188—Distinguished.

List of Acts

Hindu Adoptions and Maintenance Act, 1956; Family Courts Act, 1964

List of Keywords

Second wife, first marriage, second marriage, illegitimate children are also entitled to get maintenance from father.

Case Arising From

From judgment dated 04.10.2018 and decree dated 05.11.2018 passed by the learned Principal Judge, Family Court, Aurangabad in Matrimonial Suit No.09 of 2011, CIS-Mat 816/2013.

Appearances for Parties

For the Appellant: Mr. Sanjeet Kumar, Advocate.
For the Respondents: Mr. Rakesh Singh, Advocate.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1049 of 2018

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Kalawati Devi, Wife of Mohan Prasad Gupta, Daughter of Laxman Sao @ Lachmi Prasad Gupta, Resident of Village- Barun Bazar, Police Station- Barun, Post Office- Barun, District- Aurangabad (Bihar).

... ... Appellant/s

Versus

1. Mohan Prasad Gupta, Son of Shiv Prasad Gupta, Resident of Village- Barun Bazar, Police Station- Barun, Post Office- Barun, District- Aurangabad (Bihar).
2. Raj Kumari Devi, Daughter of Mohan Prasad Gupta Resident of Village Barun Bazar, Police Station- Barun, Post Office- Barun, District- Aurangabad (Bihar).

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Sanjeet Kumar, Advocate
For the Respondent/s : Mr.Rakesh Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 25-09-2023

In the instant appeal, the judgment dated 04.10.2018 and decree dated 05.11.2018 passed by the learned Principal Judge, Family Court, Aurangabad in Matrimonial Suit No.09 of 2011, CIS-Mat 816/2013 are under challenge.

2. The case of the appellant/opposite party no.1, as it appears from the records, is that the respondent no.1/petitioner filed a case before the learned Family Court seeking relief that the appellant/opposite party no.1 Kalawati Devi was not his

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wife and the respondent no.2/ opposite party no.2, Raj Kumari Devi was not the daughter of the respondent no.1/petitioner Mohan Prasad Gupta, submitted before the learned Family Court that his marriage was solemnized with one Prabhavati Devi in the year 1978 and out of the wedlock, they have six sons and three daughters. Five years prior to the filing of the petition before the Family Court, the appellant/opposite party no.1 Kalawati Devi, with her husband, started living in the house of the respondent no.1/petitioner as tenant. Two years thereafter, husband of the appellant/opposite party no.1 left her and he never returned. Since the husband of the appellant/opposite party no.1 did not return and people of doubtful character started visiting the appellant/opposite party no.1, the respondent no.1/petitioner asked the appellant/opposite party no.1 to vacate the house. Peeved by the demand of the respondent/petitioner, the appellant/opposite party no.1 and her daughter threatened the respondent no.1/petitioner that they would falsely implicate him and subsequently, the appellant/opposite party no.1 lodged Barun P.S. Case No.235/2009 in which the respondent no.1/petitioner was sent to jail. The appellant/opposite party no.1 also got registered a case against the son of the respondent no.1/petitioner. In order to save the future of his children, the

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respondent no.1/petitioner entered into a compromise with the appellant/opposite party no.1 and got bail on the basis of compromise. Afterwards, the appellant/opposite party no.1 and her daughter filed Maintenance Case No.10/2010 in the Family Court in which the learned Family Court, vide order dated 29.10.201, ordered for payment of Rs.2,000/-per month as maintenance. Thus, the respondent no.1/petitioner came to understand that the appellant/opposite party no.1 and her daughter wanted to ruin the future of the respondent no.1 as the appellant/opposite party no.1 was not the wife of the respondent no.1/petitioner and both of them are merely tenants. The marriage of the respondent no.1/petitioner was never solemnized with the appellant/opposite party no.1. On the aforesaid facts, the respondent no.1/petitioner sought declaration that the appellant/opposite party no.1 was not his wife and the respondent no.2/opposite party no.2 was not his daughter.

3. The appellant/opposite party no.1 contested the case of the respondent no.1/petitioner saying that her marriage was solemnized with Mohan Prasad Gupta, respondent no.1/petitioner and birth a daughter took place out of the wedlock, who was student of Intermediate at the time of filing of maintenance case. In her written statement, the

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appellant/opposite party no.1 has further submitted that in the certificate of Class-X, the name of the father of the daughter of the appellant/opposite party no.1 was mentioned as Mohan Prasad Gupta. The appellant/opposite party no.1 has further submitted that she filed Barun P.S Case No.312 of 2009 for cruelty against the respondent no.1/petitioner in which he was sent to jail and the matter was compromised.

4. On the basis of pleadings of the parties, learned Family Court framed the following issues :-

(i) Whether the suit of the plaintiff was maintainable?

(ii) Whether the plaintiff has got cause of action for filing the present suit?

(iii) Whether the defendant no.1 Kalawati Devi was not the wife of the plaintiff?

(iv) Whether the defendant no.2 Raj Kumari Devi was not the daughter of the plaintiff?

(v) Whether the plaintiff was entitled to get any other relief/reliefs?

5. Thereafter, both the sides got recorded their evidence and the learned Family Court after consideration of the facts and circumstances and evidence of the parties, came to the conclusion that the respondent no.1/petitioner has been able to

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prove that the appellant/opposite party no.1, Kalawati Devi was not the legally wedded wife, but the respondent no.1/petitioner failed to prove the fact that Raj Kumari Devi, respondent no.2/opposite party no.2 was not his daughter. Thus, the learned Family Court partially decreed the suit of the respondent no.1/petitioner declaring that Kalawati Devi was not the legally wedded wife of the respondent no.1/petitioner and further declared that respondent no.2 Raj Kumari Devi was their daughter and the respondent no.2 Raj Kumari Devi was entitled to get her maintenance from the respondent no.1/petitioner.

6. Aggrieved by the aforesaid judgment and decree of the learned Family Court, the appellant/opposite party no.1 herein Kalawati Devi has assailed the same before this Court in the present appeal.

7. In the miscellaneous appeal, number of grounds have been taken to challenge the judgment and decree of the learned Family Court submitting *inter alia*, that the judgment under appeal is erroneous on facts as also in law and is liable to be set aside. It has been further submitted that the learned Family Court did not consider the fact that the respondent no.1/petitioner has filed a Matrimonial Suit No.09/2011 to save his skin from the Misc. Case No.10/2010 only in order to

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frustrate the claim of the appellant/opposite party no.1. The learned Family Court did not consider the fact that the appellant/opposite party no.1 was legally wedded wife of the respondent no.1/petitioner after the Misc. Case No.10/2010 was decided in favour of the appellant/opposite party no.1. The learned Family Court did not also take into consideration the fact that dispute between the parties arose only in the year 2009 when the appellant/opposite party no.1 and her daughter were brutally beaten by the respondent no.1/petitioner for which Barun P.S Case No.312 of 2009 was lodged against the respondent no.1/petitioner. The learned Family Court treated the averments of the respondent no.1/petitioner as sacrosanct and merely on the basis of his statement passed the impugned order. Thus, it has been submitted in the miscellaneous appeal that the impugned order is not in accordance with law and the same is liable to be set aside in the instant appeal.

8. However, during the course of argument, the learned counsel appearing on behalf of the appellant/opposite party no.1 confined his argument only to the point that the learned Family Court proceeded beyond the pleadings while delivering the judgment and even though it declared the daughter of the appellant/opposite party no.1 entitled for

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maintenance from the respondent no.1/petitioner, yet it failed to take into consideration the claim of the appellant/opposite party no.1 for getting the maintenance from the respondent no.1/petitioner as his second wife. So, with the consent of the parties, the matter has been taken up for disposal at the stage of admission itself on the limited point.

9. Hence, the following point is formulated for determination of the present appeal :

> *(i) Whether the appellant/opposite party no.1 is entitled to receive maintenance from the respondent no.1/petitioner?*
>
> *(ii) Whether the learned Family Court could have passed the order for maintenance or entitlement of maintenance in favour of the respondent no.2/opposite party no.2 in the absence of pleadings of the parties?*

10. The learned counsel for the appellant/opposite party no.1 submitted that at this stage the appellant/opposite party no.1 does not want to assail the order of the learned Family Court to the effect that she is not the legally wedded wife of the respondent no.1/petitioner, but the learned Family Court committed an error when it went on to declare the entitlement of the respondent no.2/opposite party no.2 for

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maintenance though denying the same to the appellant/opposite party no.1. The learned counsel further submitted that the learned Family Court went beyond its jurisdiction as the issue of maintenance was not before it as there was a valid order dated 29.06.2016 passed by a court of competent jurisdiction in Misc. Case No.10 of 2010 for grant of maintenance to the appellant/opposite party no.1 and her daughter. The learned counsel further submitted that by not holding that the appellant/opposite party no.1 is entitled for maintenance, the claim of the appellant/opposite party no.1 for maintenance has become clouded since the respondent no.1/petitioner has preferred Criminal Revision No. 845 of 2016 against the order dated 29.06.2016 passed in Misc. Case No. 10 of 2010 allowing the maintenance to the appellant/opposite party no.1 and her daughter. It would severely prejudice the mind of any court. The learned counsel further submitted that there is no doubt that there has been relationship between the appellant/opposite party no.1 and the respondent no.1/petitioner and from this relationship, birth of a daughter namely, Raj Kumari Devi (respondent no.2 herein) has taken place. The appellant/opposite party no.1 can be considered as the second wife of the respondent no.1 and for this reason, she becomes entitled for

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maintenance. The learned counsel relied on a judgment of the Hon'ble Supreme Court in the case of ***Badshah Vs. Urmila Badshah Godse and Another***, reported in ***(2014) 1 SCC 188*** (***Paragraphs 13 to 20)***, on the point that the second wife is also entitled for maintenance. The learned counsel further relied on a judgment of Hon'ble Supreme Court in the case of ***Bachhaj Nahar v. Nilima Mandal***, reported in, ***AIR 2009 SC 1103*** (***Paragraphs 9 and 12***), on the point that the learned Family Court could not have travelled beyond the pleadings and decided that only the respondent no.2 was entitled for maintenance. Thus, the learned counsel submitted that the impugned judgment and decree of learned Family Court be set aside to the extent of denial of maintenance to the appellant/opposite party no.1 at par with daughter-respondent no.2 and the appellant/opposite party no.1 be declared to be entitled for maintenance like her daughter-respondent no.2.

11. The contention of the appellant/opposite party no.1 was vehemently opposed by the learned counsel appearing on behalf of the respondent no.1/petitioner. The learned counsel submitted that the learned Family Court has discussed at length the evidence of both sides and has also recorded its reasons for its decision holding that the appellant/opposite party no.1 is not

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the wife of the respondent no.1/petitioner. The learned counsel further submitted that there is no error in the order of the learned trial court except that it ought not to have declared that the respondent no. 2/opposite party no.2 was entitled for any maintenance from the respondent no.1. However, the learned counsel conceded that the respondent no.1/petitioner has not preferred any appeal challenging the judgment and decree of the learned Family Court on this account.

12. Since the learned counsel for the appellant/opposite party no.1 has confined his prayer to only one point regarding eligibility of the appellant/opposite party no.1 to get maintenance from the respondent no.1/petitioner and the learned Family Court travelling beyond the pleadings for recording its finding, we are taking up the point for determination as a whole for deciding the instant appeal.

13. For arriving at just conclusion, it is essential to take note of relevant statutory provisions.

Section 7 of the Family Courts Act reads as under :-

> *"7.* ***Jurisdiction****.—(1) Subject to the other provisions of this Act, a Family Court shall—*
>
> *(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for*

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the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) xxx;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) xxx;

(d) xxx;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) xxx.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal

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Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment".

(underline supplied)

Further, Section 20 of the Hindu Adoptions and Maintenance Act, 1956 reads as under :-

"20. Maintenance of children and aged parents.—*(1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.*

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

(3) The obligation of a person to maintain his or her aged or 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".

14. From perusal of the provisions of Section 7 of the Family Courts Act, 1984, it is evident that a suit can be brought for declaration of matrimonial status of any person, so the respondent no.1/petitioner was within his right to bring the suit for declaration that the appellant/opposite party no.1 was not his

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wife.

15. We have gone through the evidence adduced on behalf of the parties with regard to the marital status of the appellant/opposite party no.1 and the respondent no.1/petitioner. It has been admitted by the OPW No.2, who is the appellant/opposite party no.1 herself, that the respondent no.1/petitioner was married before solemnizing the marriage with her and the respondent no.1/petitioner has got six sons and three daughters from his first wife. Even the respondent no.2/opposite party no.2, who deposed as OPW 1, has admitted that the respondent no.1/petitioner has two wives and from first wife, there are six sons and three daughters. We need not make further discussion on this point since the same has been discussed at length by the learned Family Court which arrived at the conclusion that the appellant/opposite party no.1 was not legally wedded wife of the respondent no.1/petitioner, though it appears from the evidence of the witnesses of the appellant/opposite party no.1 that the appellant/opposite party no.1 married with respondent no.1/petitioner during the subsistence of marriage of the respondent no.1/petitioner with one Prabhavati Devi.

16. From perusal of evidence of the parties, some

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interesting facts come to light. The appellant/opposite party no.1 has been living in the house of the respondent no.1/petitioner where he has been living with his first wife and children. It is not the case of the appellant/opposite party no.1 either in the written statement or in her evidence that she was not knowing about the first marriage of the respondent no.1/petitioner. This fact becomes important since the Hon'ble Supreme Court in the case of **Badshah Vs. Urmila Badshah Godse (supra)** has held that if the second marriage was solemnized without knowledge of the first marriage, in that situation, the second wife becomes entitled as is clear from paragraphs 13 to 20. Hence, the aforesaid decision is distinguishable on the facts and circumstances of the present case.

17. Moreover, the Hon'ble Supreme Court in the case of ***Savitaben Somabhati Bhatiya Vs. State of Gujarat and Ors.,*** reported in ***(2005) 3 SCC 636*** has clearly held that the second wife is not entitled for maintenance. It would be relevant to quote relevant paragraph nos. 8, 15, 17, 18, 20 and 21 of the said judgment :

> ***"8.*** *There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who*

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unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression "wife" as per Section 125 of the Code refers to only legally married wife.

15. *In Yamunabai case [(1988) 1 SCC 530 : 1988 SCC (Cri) 182 : AIR 1988 SC 644] it was held that the expression "wife" used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word "wife" is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of the law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of the law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act, 1955 (in short "the Marriage Act"). Marriage with a person having a living spouse is null and void and not voidable. However, the*

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attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status or relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by reference to the appropriate law governing the parties.

17. *In Yamunabai case [(1988) 1 SCC 530 : 1988 SCC (Cri) 182 : AIR 1988 SC 644] plea similar to the one advanced in the present case that the appellant was not informed about the respondent's earlier marriage when she married him was held to be of no avail. The principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code.*

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> ***18.*** *It may be noted at this juncture that the legislature considered it necessary to include within the scope of the provision an illegitimate child but it has not done so with respect to a woman not lawfully married. However desirable it may be, as contended by learned counsel for the appellant to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include a woman not lawfully married in the expression "wife".*
>
> ***20.*** *In the instant case the evidence on record has been found sufficient by the courts below by recording findings of fact that earlier marriage of the respondent was established.*
>
> ***21.*** *In that view of the matter, the application so far as claim of maintenance of the wife is concerned stands dismissed".*

18. We find no merit in the contention of learned counsel for the appellant/opposite party no.1 that the learned Family Court went beyond pleadings and passed the orders which were not at all required. The learned Family Court when it declared that the respondent no.2/opposite party no.2 is entitled to receive maintenance from the respondent

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no.1/petitioner, it was only stating what was in the statutes specifically Section 20 of the Hindu Adoptions and Maintenance Act, 1956. The said declaration is merely stating the obvious. In a plethora of the decisions, the Hon'ble Supreme Court has held the illegitimate children are also entitled to get maintenance and we do not find that the learned Family Court committed any error if it went to declare the entitlement of the respondent no.2/opposite party no.2 for getting maintenance from the respondent no.1/petitioner.

19. At the same time, there was no occasion for the learned Family Court to declare the entitlement of the appellant/opposite party no.1 to get maintenance from the respondent no.1/petitioner since it has declared that she was not legally wedded wife of respondent no.1/petitioner. If the appellant/opposite party no.1 is not held to be the wife of the respondent no.1/petitioner, in a proceeding for declaration of her matrimonial status, the learned Family Court was not required to adjudicate her entitlement for maintenance in absence of any specific pleadings. So, we do not find any merit in the submission made by the learned counsel for the appellant/opposite party no.1 on this point.

20. Further, it appears from the submissions of the

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learned counsel for the appellant/opposite party no.1 that the appellant/opposite party no.1 is apprehensive about her claim of maintenance allowed by the learned lower court getting affected by the present order in revision filed by the respondent no.1/petitioner, under such circumstances, the appellant/ opposite party no.1 will always be at liberty to raise all issues before the revisional court and we feel disinclined to further deliberate upon the matter.

21. In the result, the points for determination are decided accordingly in terms of the aforesaid discussions against the appellant/opposite party no.1.

22. In the light of the facts and circumstances and discussions made hereinabove, we do not find any merit in the instant appeal and the same is dismissed.

23. However, there will be no order as to costs.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	14.09.2023
Uploading Date	25.09.2023
Transmission Date	

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