
(2010) 08 BOM CK 0158

Bombay High Court (Aurangabad Bench)

Case No: Criminal Writ Petition No. 175 of 2010

Dinkar Fakirrao Adhav

APPELLANT

Vs

Vimal Dinkar Adhav

RESPONDENT

Date of Decision: Aug. 12, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 125

Hon'ble Judges: Shrihari P. Davare, J

Bench: Single Bench

Advocate: S.V. Deshmukh, for the Appellant; D.M. Pardeshi, for the Respondent

Final Decision: Dismissed

Judgement

Shrihari P. Davare, J.

Heard learned Counsel for the respective parties.

2. By the present petition, filed by the petitioner/husband (original Opponent), under Articles 226 and 227 of Constitution of India, prayed to quash and set aside the Judgment and order dated 1.1.2010 passed by learned Additional Sessions, Sangamner, in Criminal Revision Application No. 7/2007, thereby granting maintenance of Rs. 600/- per month to the respondent/wife herein (original applicant) from 12.7.2005.

FACTUAL MATRIX:

3. The petitioner herein married with the respondent on 22nd January, 1980 as per the Hindu religious rites since his earlier wife, viz. Kesarbai had expired. However, it is alleged that since the petitioner herein refused and neglected to maintain the respondent/wife, the respondent/wife filed an application, being Criminal Misc. Application No. 335/2005 for grant of maintenance u/s 125 of Cr.P.C. before the learned Judicial Magistrate First Class, Sangamner on 12.7.2005 and copy thereof. is produced at

Exhibit-A (page 9).

The petitioner herein filed reply/Written Statement to the said application on 21st April, 2006 and thereby opposed the said application for grant of maintenance and copy of the said reply/Written Statement is produced at Exhibit-D (page 12).

4. It appears that, after hearing both the parties, the learned JMFC, Sangamner, dismissed the said application for grant of maintenance by judgment and order dated 15th January, 2007. While dismissing the said application of respondent/wife for grant of maintenance, the learned JMFC observed that, the petitioner/husband ill-treated the wife after marriage and drove her out of house and the applicant therein has proved the fact of negligence and refusal to maintain her on the part of the Opponent/husband. But, since the income of the opponent/husband through agricultural land was not proved, the said application came to be dismissed and the copy of the said judgment is produced at Exhibit-C (page 15).

5. Being aggrieved and dissatisfied by the said judgment and order, dismissing the application for grant of maintenance, the respondent/wife preferred criminal revision application No. 7/2007 before the learned Additional Sessions Judge, Sangamner, which was allowed partly by judgment and order dated 1st January, 2010 and thereby the judgment and order dated 15th January, 2007 passed by learned JMFC in Cri. Misc. Application No. 335/2005, was set aside and the petitioner herein was directed to pay the maintenance @ Rs. 600/- per month to the respondent/wife from the date of application u/s 125 of Cr.P.C., i.e. since 12.7.2005 with costs quantified at Rs. 1000/- and the copy of the said judgment and order of the revisional court is produced at Exhibit-D (page 23).

SUBMISSIONS:

6. Being aggrieved and dissatisfied by the said judgment and order dated 1.1.2010 rendered by the revisional court, i.e. learned Additional Sessions Judge, Sangamner, the petitioner/husband has preferred the present petition and prayed for quashment of the said impugned order dated 1.1.2010 recorded by learned Additional Sessions Judge, Sangamner.

7. Learned Counsel for the petitioner canvassed that the learned trial Judge, i.e. JMFC, Sangamner, had rightly observed in the judgment dated 15.1.2007 that the respondent/wife, failed to prove the income of the petitioner/husband and in the absence of any evidence on record as to income of the petitioner/husband, the application for grant of maintenance was dismissed. In the said context, the learned Counsel for the petitioner submitted that the learned trial Judge has considered the 7/12 extracts, i.e. (Exhibits-29 to 31), produced on record, which show name of son of the petitioner, viz., Arun Dinkar Adhav and also considering the position that the respondent herein has not averred that the petitioner earns income other than the agricultural source and came to the conclusion that in the absence of any documentary evidence to support the

contention of the respondent herein on the point of income, the petitioner has no source of agricultural land to earn income out of it and since there was no averment in the said application that the petitioner herein earned income out of his other source and arrived at the conclusion that the petitioner herein has no source of income. The learned Counsel for the petitioner further submits that the said finding was drawn by the learned trial Judge on the basis of evidence on record and no interference therein was warranted in the revisional jurisdiction, since there is no illegality or incorrectness in the judgment of the trial court. In substance, the learned Counsel for the petitioner submits that the revisional court exceeded its jurisdiction while allowing the revision application preferred by the respondent herein partly and awarded maintenance at Rs. 600/- per month from 12.7.2005 to the respondent/wife, which is arbitrary and deserves to be quashed and set aside.

8. Learned Counsel for the respondent/wife opposed the present petition vehemently and submitted that the learned revisional court has rightly considered the 7/12 extracts, i.e. Exhibits-28 to 31, and aptly dealt with the question that whether, on the basis of the revenue records (Exhibits-28 to 31), conclusion can be drawn that the respondent No. 1, i.e. petitioner herein, possessed of sufficient means to provide separate maintenance to the respondent/wife. Accordingly, while dealing with the said aspect, it is canvassed that the learned revisional court observed that in extract at Exhibit-29, initially name of respondent No. 1 was mentioned and it came to be substituted by name of his son Arun and so is the case in respect of extract at Exhibit-30, and observed that it can be concluded that the lands mentioned therein are either self-acquired or ancestral properties of petitioner herein and although the name of Arun was incorporated, the respondent No. 1 in the said petition and petitioner herein has share in the said land and further observed that the trial court committed error, and consequently, quashed and set aside the order dated 15.1.2007 passed by the trial court rightly and awarded maintenance of Rs. 600/- per month to the respondent/wife rightly, and no interference therein is called for in the writ jurisdiction.

CONSIDERATION:

9. I have perused the impugned judgment and order dated 15.1.2007 passed by learned JMFC, Sangamner in Cri.M.A. No. 335/2005, dismissing the application for grant of maintenance preferred by the respondent herein as well as perused the judgment and order dated 1.1.2010, rendered by the learned Additional Sessions Judge, Sangamner, quashing and setting aside the judgment and order dated 15.1.2007 passed by the trial court and awarding the maintenance of Rs. 600/- per month to the respondent/wife from 12.7.2005 and also perused the Record and proceedings and also considered the submissions advanced by learned Counsel for the parties anxiously, and on perusal of 7/12 extracts (Exhibit-29) of village Marhal, Tq. Sinnar District Nasik, it appears that initially name of the petitioner herein, viz. Dinkar Fakirrao Adhav did appear in the column of holder of the land bearing Survey No. 4, admeasuring 26 R., but the name of his son, viz., Arun Dinkar Adhav was entered into the said revenue extract, deleting the name of

petitioner herein by Fer Far/Mutation entry No. 709. The petitioner herein has not produced the extract of Fer Far/Mutation Entry No. 709 on record, which could have thrown light on the aspect as to how and why name of the petitioner herein was deleted and name of his son Arun was recorded in the revenue record of said land. Moreover it is also seen from 7/12 extract that Bajra and ground-nut crops were being cultivated in the said land in the year 2006-2007. As regards another 7/12 extract (Exhibit-30), it is seen that initially name of the petitioner herein was recorded in revenue record of land Survey No. 3 of village Marhal BK. Tq. Sinnar, District Nasik and names of other holders were recorded in the column of holders thereof by Fer Far/Mutation entries, as stated therein by deleting the name of petitioner herein, and the said land ad measures 2 hectares and 2 R. It is also seen that Bajra and cotton crops were being cultivated in the said land in the year 2006-2007. As regards 7/12 extract (Exhibit-31), it is seen that name of Arun Dinkar Adhav, son of the petitioner, Kausabai and Nirmala, i.e. daughters of the petitioner have been recorded in the revenue records of the land Survey No. 7, village Marhal Bk. Tq. Sinnar District Nasik and Bajra and cotton crops were being cultivated therein in the year 2006-2007.

10. Thus, it is apparently clear that the name of the petitioner herein was initially entered on the revenue record of land Survey No. 4 as well as Survey No. 3 and name of the petitioner was deleted subsequently. But, the petitioner has not produced the respective extracts of the Fer Far/Mutation entries thereof as mentioned herein above and, therefore, apparently, the observations made by the learned revisional court in that respect cannot be faulted with. Hence, having comprehensive view of the matter, I am inclined to accept the submissions advanced by learned Counsel for the respondent herein.

11. In the circumstances, I am of the considered view that the learned Revisional Court has rightly quashed and set aside the judgment and order dated 15.1.2007 passed by learned JMFC, Sangamner in Cri.M.A. No. 335/2005 and rightly awarded maintenance to the respondent herein as stated therein and no interference therein is warranted under the extraordinary jurisdiction under Articles 226 and 227 of Constitution of India and, therefore, present petition is liable to be rejected.

12. In the result, the present petition bears no substance and same is devoid of any merits and, therefore, same stands dismissed. Rule stands discharged accordingly. R. and P. be sent back to the concerned court.