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91 CWN 61

Calcutta High Court

Case No: Appellate Decree No. 626 of 1975

Panna Lal Hazra	APPELLANT
Vs	
Fulmoni Hazra and Others	RESPONDENT

Date of Decision: May 23, 1986

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 18, 19, 20, 21, 21(iii)
- Transfer of Property Act, 1882 - Section 11

Citation: 91 CWN 61

Hon'ble Judges: Sukumar Chakravarty, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Mrinal Kanti Roy, for the Appellant; Parimal Das, for the Respondent

Judgement

A.M. Bhattacharjee, J.

A suit for maintenance by a step-mother against her step-son has been decreed by the trial court and the decree has also been affirmed by the first appellate court on two grounds, namely (1) that the dependent step-mother is liable to maintain his step-mother, the plaintiff, under the provisions of the Hindu Adoption and Maintenance Act, 1956 and (2) that the defendant is also liable to do so under the express terms of the Deed of Gift whereby certain properties were transferred to him by his father. After hearing the learned counsel for the parties and going through the record ourselves we are of opinion that the courts below were wrong in their appreciation of the relevant provisions of the Hindu Adoption and Maintenance Act, 1956 and were wrong in holding that on the materials on record, the defendant step-son, who is the appellant before us, could be held to be liable to maintain the plaintiff step-mother, respondent before us, under the provisions of the aforesaid Act. But we are, however, satisfied that the concurrent finding of the court below that the defendant is liable to maintain his step-mother, the plaintiff, because of the express provisions in the Deed of Gift whereunder properties were conveyed to him by his deceased father, is correct and unassailable.

2. Five Sections of the Hindu Adoption and Maintenance Act, 1956 specify the persons who are entitled to be maintained and who are liable to maintain them and these are Sections 18, 19, 20, 21 and 22. of these Sections 18 and 19, dealing with maintenance of wife and widowed daughter-in-law need not detain us in this case where we are concerned with the right of a step-mother to be maintained by her step-son, or to put it in other words, with the liability of a step-son to maintain his step-mother.

3. It may at once be stated that under the Hindu Law as it stood before this Act of 1956, a step-son had no personal obligation to maintain his step-mother. But Section 20 of the Act has introduced some change in that law and while declaring in Sub-section (1) that "a Hindu is bound during his or her life time to maintain his or her . . . aged or infirm parents" has explained in the Explanation added to that Section that "in this Section "parent" includes a childless step-mother." Be it noted that the obligation imposed on Hindu son by Section 20 of this Act to maintain, among others. His aged or infirm parents including a childless step-mother, is personal in the sense that the same is not in any way dependent on the son"s possessing any property. This would clearly appear from a comparison of the provisions of Section 20 with those of Section 19 immediately preceding whereunder though a father-in-law has been made liable to maintain his widowed daughter-in-law, such liability "shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession. . ." But, as already noted, the step-mother, in order to be entitled to claim maintenance from her step-son, must be one who is childless. The trial court having found that the plaintiff step-mother had a daughter and was residing with her son-in-law at the relevant time and the appellate court not having overturned this finding, the courts below ought to have realized that the plaintiff, not being a childless step-mother, was not entitled to the benefit of section 20.

4. u/s 22 of the Act, the defendant step-son would be liable to maintain his step-mother, as being the widow and therefore a "dependant" of his deceased father within the meaning of section 21(iii) of the Act; but the liability u/s 22(1) is not at all personal, but absolutely proprietory as would be apparent from the relevant provisions of Section 22(1) which provide that "the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased". The defendant would, therefore, be liable to maintain his step-mother as being the dependant of his deceased father, provided the defendant as heir of his deceased father has inherited some estate from his deceased father. It is true that notwithstanding the user of the expression "inherited" in Section 22(1), it has been held by I. D. Dua, J., (as his Lordship then was) in a Division Bench decision of the Punjab High Court in Gulzara Singh Nanta Singh Vs. Smt. Tej Kaur, that the word "heir" in Section 22(1) must be construed in a broad and general sense so as to include all those on whom the estate of the deceased devolves whether on intestacy or by means of a testamentary instrument like a will. But even then, there is no finding by the courts below that the defendant, as "heir" of his deceased father, has acquired, whether by testamentary or interstate succession, any estate from his deceased father. Then again, u/s 22(2), the dependant of the deceased

would be entitled to maintenance from the heir of the deceased, provided such dependant has not acquired, whether by testamentary or interstate succession, any share in the estate of the deceased. If the widow of a deceased has also succeeded as one of his heirs, whether through testament or on intestacy, the question of her right to be maintained by some other heir of the deceased out of the estate of the deceased would not arise. But we do not find firm finding that the plaintiff, even though she was undisputedly an heir to her deceased husband, has not obtained, by testamentary or interstate succession, any share in her deceased husband''s property. We are of the view that without any firm finding as to the defendant having acquired by testamentary or interstate succession some property from his deceased father and as to the plaintiff not having obtained any such property, it would not be legally possible to hold that the plaintiff step-mother, who is not childless, is entitled to be maintained by the defendant step-son.

5. But both the Courts have found that under the express terms of the Deed of Gift whereby properties were conveyed to the defendant by his deceased father, the defendant is obliged to maintain her step-mother. We do not agree with the learned Advocate for the defendant-appellant that such a condition in the instrument to provide maintenance to the donor and/or his dependants is in any way repugnant to the interest created by the instrument and, in our view, the condition is valid and enforceable and not hit by the provisions of section 11 of the Transfer of Property Act. We, therefore, agree with the courts below that the defendant step-son, who is the appellant before us, is bound to maintain his step-mother, the plaintiff-respondent. We accordingly dismiss the appeal and confirm the decree passed by the trial court, but we make no order as to costs in this appeal. Drawing up of formal decree is dispensed with.

Sukumar Chakraborty, J.

6. I agree.