



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF APRIL, 2024

PRESENT

THE HON'BLE SMT. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS FIRST APPEAL NO. 9908 OF 2018 (FC)

BETWEEN:

1. SMT UMA,
W/O BANASHANKAR, AGED ABOUT 45 YEARS,
2. B PRASAD,
S/O BANASHANKAR, AGED ABOUT 19 YEARS,

PHYSICALLY AND MENTALLY INCAPABLE
REP. BY HIS MOTHER GUARDIAN RESIDING AT
HOUSE NO.22 J M ROAD M S LANE BANGALORE-02

...APPELLANTS

(BY SRI SAMEER S N, ADVOCATE)

AND:

1. BANASHANKAR,
S/O APPAIAHSWAMY, AGED ABOUT 59 YEARS,
PRESENTLY RESIDING AT NO.193, 5TH MAIN,
5TH CROSS, APPAIAH SWAMY LAYOUT,
UTTARAHALLI, BANGALORE-61.
2. ESHWAR,
S/O APPAIAHSWAMY, AGED ABOUT 55 YEARS,
PRESENTLY RESIDING AT NO.353, 6TH MAIN,
CHIKKALASANDRA, BHCS LAYOUT,
UTTARAHALLI MAIN ROAD, BANGALORE-560061.
3. SRI NARAYANA,
S/O APPAIAHSWAMY,
AGED ABOUT 48 YEARS,
PRESENTLY RESIDING AT NO.194, 195 & 196,





APPAIAHSWAMY LAYOUT, 5TH CROSS, 5TH MAIN,
UTTARAHALLI, BANGALORE - 61.

4. SRI VIJAYA KUMAR,
S/O APPAIAHSWAMY, PRESENTLY RESIDING AT
NO.330 7TH MAIN, CANARA BANK COLONY,
UTTARAHALLI, BANGALORE - 61.
5. SRI MOHAN,
S/O APPAIAH SWAMY, AGED ABOUT 42 YEARS,
PRESENTLY RESIDING AT NO.12/9,
OPP:CANARA BANK ATM, UTTARAHALLI MAIN ROAD,
BANGALORE - 61.

...RESPONDENTS

(V/O/DATED 02.09.2022 APPEAL AGAINST R2 IS DISMISSED)

THIS MFA IS FILED UNDER SECTION 19 (1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 05.09.2018 PASSED IN OS.NO.289/2014 ON THE FILE OF THE IV ADDITIONAL PRL. JUDGE, FAMILY COURT, BENGALURU, WHEREIN, "THE SUIT OF THE PLAINTIFFS IS DECREED IN PART ONLY AGAINST THE DEFENDANT NO.1, THE SUIT OF THE PLAINTIFFS IS DISMISSED AS AGAINST THE DEFENDANT NOS.2 TO 5. THE MONTHLY MAINTENANCE OF RS.2,000/- AWARDED TO THE PLAINTIFF NO.1 IN OS.NO.284/2002 IS ENHANCED TO RS.3,000/- THE MONTHLY MAINTENANCE OF RS.1,000/- AWARDED TO THE PLAINTIFF NO.2 IN OS.NO.284/2002 IS ENHANCED TO RS.3,000/-, WHICH IS FILED UNDER ORDER 7 RULE 1 & 2 OF CPC.

THIS APPEAL COMING ON FOR HEARING THIS DAY
ANANT RAMANATH HEGDE J., DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal under Section 19 of the Family Courts Act, 1984 is by the plaintiffs in O.S.No.289/14 on the file of IV Additional Principal Judge, Family Court, Bengaluru.

2. The parties to the proceeding are referred to as per their ranking in the Family Court.

3. Plaintiff No.1 is the wife of defendant No.1 and plaintiff No.2 is the son of plaintiff No.1 and defendant No.1. Defendants No.2 to 5 are the brothers of 1st defendant.

4. Plaintiff No.1 alleged that after her marriage she was subjected to cruelty and she was compelled to file a suit for maintenance. Said suit in O.S.No.284/2002 is decreed directing defendant No.1 to pay monthly maintenance of Rs.2,000/- for plaintiff No.1 and Rs.1,000/- to plaintiff No.2. Plaintiffs claim that the amount awarded in O.S.No.284/2002 is not sufficient to maintain the plaintiffs in view of escalation in the cost of living. Hence, the suit in O.S.No.289/2014 is filed seeking maintenance of Rs.5,000/- to each of the plaintiffs.



5. Defendant No.1 contested the suit. He admitted the proceeding in O.S.No.284/2002 and the decree for maintenance in the said suit. It is further contended by 1st defendant that plaintiff No.2 was earlier differently abled, now cured of his ailment, and has attained majority and is not entitled to maintenance.

6. The Family Court decreed the suit in part and awarded maintenance of Rs.3,000/- each in favour of the plaintiffs. The Family Court directed 1st defendant to pay maintenance of the aforesaid sum from the date of disposal of M.C.No.3261/3013 the petition filed by plaintiff No.1 seeking dissolution of marriage.

7. Aggrieved by the judgment and decree to the extent of disallowing the plaintiffs' claim, the present appeal is filed.

8. Respondents, though served, are not represented.

9. Learned counsel appearing for the appellants would contend that the judgment and decree passed by the Family Court disallowing the claim of the plaintiffs to the extent of



Rs.2,000/- per month towards the maintenance of each of the plaintiffs are unsustainable. It is also urged by the learned counsel appearing for the appellants that plaintiff No.2 is differently abled and incapable of earning and both the plaintiffs do not have any source of income other than the decree for maintenance granted in O.S.No.284/2002. It is also submitted that 1st defendant has failed to abide by the decree passed in earlier suit and he is in arrears of maintenance.

10. It is also urged that the Family Court has not appreciated the evidence and the circumstances in proper perspective and the Family Court ignored the materials placed before the Family Court which established that 1st defendant has alienated quite a few immovable properties belonging to the family and capable of paying Rs.5000/- per month to the each of the plaintiffs.

11. The appellants have also filed an application under Section 151 of the Code of Civil Procedure to attach the property standing in the name of the 1st defendant. The application is also supported by the property records in the name of defendant No.1.



12. This Court has considered the contentions raised at the bar and also perused the records.

13. The following points arise for consideration:

(i) Whether the Family Court is justified in granting only Rs.3,000/- per month to each of the plaintiffs as monthly maintenance as against the claim of Rs.5,000/- per month to each of the plaintiffs?

(ii) Whether a case is made out to attach the property standing in the name of the 1st defendant?

14. There is no dispute that the earlier suit filed by the plaintiffs in O.S.No.284/2002 was decreed in part awarding Rs.2,000/- per month as maintenance to 1st plaintiff and Rs.1,000/- per month as maintenance to plaintiff No.2. It is also forthcoming from the records that defendant No.1 against whom the said decree was passed is not regular in making the payment of the amount ordered in the said suit. It is also forthcoming that the plaintiffs had to file execution petitions for recovery of the arrears of the amount.



15. The decree in the earlier suit was passed in the year 2006. This Court can certainly take cognizance of the fact that the cost of living has gone up since then.

16. Though plaintiff No.2 has attained the age of majority, he is differently abled and is under the care and custody of plaintiff No.1 - his mother. Nothing is placed on record to hold that his ailment is cured. We have seen plaintiff No.2 who was present in Court and are convinced of his disability, as claimed.

17. The Family Court has taken note of the fact that defendant No.1 is aged 70 and has awarded only Rs.3,000/- per month in favour of each of the plaintiffs as against Rs.5,000/- per month as claimed. The Family Court has concluded that the plaintiffs have not produced any materials to establish the financial capacity of defendant No.1.

18. The finding that plaintiffs have not produced materials to show that the 1st defendant has the property though is a correct finding, based on said finding Family Court could not have declined the plaintiffs' claim in part. Since it is



established that plaintiff No.2 is differently abled, the Family Court ought to have decreed the suit as prayed for as the maintenance claimed is Rs.5,000/- for each of the plaintiffs as the said of Rs.5000/- per month is an extremely modest sum.

19. In addition, before this Court, the appellants have produced the property records standing in the name of the 1st defendant which clearly reveals that the immovable property along with a structure is standing in the name of the 1st defendant. This being the position, this Court is of the view that the plaintiffs are entitled to maintenance of Rs.5,000/- per month for each of the plaintiffs.

20. It is also relevant to note that the Family Court has not granted the monthly maintenance from the date of the suit. However, the decree directs payment of monthly maintenance from the date of the decree in M.C.No.3261/2013. The wife and the differently abled son's right to claim maintenance has nothing to do with the divorce petition filed by the wife. Thus, this Court does not find any justification in the decree which says 1st defendant is liable to pay maintenance only from the date of disposal of the petition seeking divorce and denying the



maintenance from the date of the suit. Therefore, each of the plaintiffs is entitled to monthly maintenance of Rs.5,000/- per month from the date of the suit.

21. It is also brought to the notice of the Court that 1st defendant is in arrears and has not discharged the liability fastened by the Family Court.

22. Under Section 39 of the Transfer of Property Act, of 1882, the arrears of maintenance can be a charge on the property. Since the 1st defendant is not diligent in discharging his liability under the decree, this Court is of the view that a charge must be created over the property of the 1st defendant to secure the payment of maintenance to the plaintiffs. The charge created over the property shall have to be recorded in all the property records standing in the name of the 1st defendant.

23. Hence, the following:

ORDER

(i) Appeal is ***allowed***.



- (ii) The application filed for attaching the property of 1st defendant is allowed in part and the charge is created over the said property to secure payment of maintenance to the plaintiffs.
- (iii) The judgment and decree dated 05.09.2018 passed in O.S.289/2014 on the file of the IV Additional Principal Judge, Family Court, Bengaluru are modified.
- (iv) The suit of the plaintiffs in O.S.289/2014 is decreed against defendant No.1.
- (v) Defendant No.1 shall pay monthly maintenance of Rs.5,000/- to each of the plaintiffs from 12.04.2012 i.e., the date of the suit till the realisation of the entire amount.
- (vi) The property standing in the name of the 1st defendant described in the schedule given below, and any other property in the name of the 1st defendant, if the property details are furnished by the plaintiff, shall carry the charge of maintenance ordered by this Court.
- (vii) The jurisdictional Sub-registrar shall make an entry in the Encumbrance Certificate relating



to the charge of maintenance as ordered by this Court in the schedule described below.

(viii) The Bruhat Bengaluru Mahanagara Palike shall make necessary entries in the property records of the property described in the schedule below:

Schedule:

Site No.9 in Sy.No.41 measuring 40 feet x 31.9 feet in all 1276 square feet, situated at Uttarahalli Village, Uttarahalli Hobli, Bengaluru surrounded on the East by Road, West by Private House, North by Site No.8, South by Site No.10

**Sd/-
JUDGE**

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JUDGE**