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**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 12TH DAY OF SEPTEMBER, 2019

PRESENT

THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE P.G.M. PATIL

M.F.A.No.100200/2017 (FC)

BETWEEN:

SADASHIVANANDA S/O KASHAPPA DANDIN,
AGE ABOUT 47 YEARS, OCC: BUSINESS,
R/O: NEAR PANJARAPOL,
KALASAPUR ROAD, GADAG. ... APPELLANT

(BY SRI.S.G.KADADAKATTI, ADV.)

A N D :

KUMARI. PADMINI,
D/O SADASHIVANAND DANDIN,
AGE: 22 YEARS, OCC: STUDENT,
R/O: SHREEDEVI GIRLS HOSTEL,
SIRA ROAD, TUMAKURU. ... RESPONDENT

(BY SRI.J.S.SHETTY, ADV.)

THIS APPEAL IS FILED UNDER SECTION 19 (1) OF THE
FAMILY COURT ACT, 1984, AGAINST THE JUDGMENT AND
DECREE DATED 09.11.2016 PASSED IN O.S.No.12/2014 ON THE
FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, GADAG, PARTLY
DECREERING SUIT FILED FOR MAINTENANCE AND ETC.,

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY,
S.N. SATYANARAYANA, J., DELIVERED THE FOLLOWING:

JUDGMENT

The defendant in O.S.No.12/2014 on the file of the Principal Judge, Family Court, Gadag, has come up in this appeal, impugning the judgment and decree dated 09.11.2016 passed therein.

2. Admittedly, the said suit in O.S.No.12/2014 was filed under Section 20 of the Hindu Adoption and Maintenance Act, along with invoking the provisions of Order VII Rule 1 of the Code of Civil Procedure.

3. The prayer of the plaintiff who is respondent herein is that her father/defendant in the said suit be directed to pay maintenance and expenses to the plaintiff; that he should go on paying the maintenance till the marriage of the plaintiff and further he should be directed to meet the marriage expenses of the plaintiff, in the event the marriage of the plaintiff is fixed and make arrangement for smooth education career of the plaintiff. In the said suit, the only defendant is the appellant herein who is none other

than the father of plaintiff wherein he filed his written statement denying all the allegations except the relationship between himself and the plaintiff and also that the plaintiff has completed engineering in Electronics and Communication in the year 2013 itself and secured admission for PG Course in Shridevi Institute of Engineering and Technology, Tumkur, and he would state that she has already completed first and second semester by the time he would file the written statement. However, other allegations are denied by him. He would further state that he has already paid a sum of Rs.1,65,000/- to the plaintiff for her education expenses and would deny the plaintiff's averments regarding Rs.1,58,160/- is already utilized out of Rs.1,65,000/- paid by him and so also her demand for purchase of latest laptop and other gadgets for educational purpose. He would also deny the need of plaintiff to a sum of Rs.15,000/- p.m. which she has calculated at Rs.1,80,000/- per year. In the said written statement, he would also state that

she is already earning a sum of Rs.45,000/- to Rs.50,000/- per month which she has suppressed from the Court. With this pleadings, the Court below framed the following issues:

- i) Whether plaintiff proves that she is legitimate daughter of defendant?*
- ii) Whether the plaintiff further proves that she is unable to maintain herself?*
- iii) Whether the plaintiff is entitled to the relief of maintenance as sought for?*
- iv) What order or decree?*

4. Thereafter, the matter went into trial where the plaintiff adduced evidence as PW-1 which is nothing but reiteration of plaint averments. In the cross-examination, she would state that besides herself, her parents have other children; namely Keerthinath, Pooja, Sukanya and Mahantesh. According to the plaintiff, Sukanya is already married and Pooja has studied upto II PUC and thereafter she has given up her education and she is due for marriage. However,

in the entire evidence, the plaintiff has not stated whether her marriage is finalized or otherwise and what is the quantum of money that is required for her marriage expenses. So far as the defendant in the said suit who is the appellant herein is concerned, he has not entered into the witness box and adduced evidence, except subjecting the plaintiff for cross-examination. Issue No.1 which is with reference to whether plaintiff is legitimate daughter of defendant, is answered in the affirmative; issue No.2 as to whether the plaintiff is unable to maintain herself, is answered in the affirmative and issue No.3 with reference to the prayer whether the plaintiff is entitled to the relief of maintenance as sought for, is answered partly in the affirmative. While passing the final order, the Court below would decree the suit partly in granting maintenance to the plaintiff to the tune of Rs.10,000/- p.m. till her marriage and to pay marriage expenses of Rs.15 lakhs to the plaintiff. It is this order of the Court below which is under challenge in this proceedings, on

the ground that the suit was disposed of in haste, the material evidence which was available on record is not properly appreciated and the status of the plaintiff wherein she has completed Bachelor of Engineering and M.Tech. and also working as outsource agent and getting handsome income, is not looked into and without considering this aspect, the trial Court has not only awarded monthly maintenance of Rs.10,000/- but also awarded Rs.15,00,000/- towards her marriage expenses which is erroneous and totally impermissible in law without there being any evidence to support the same.

5. Though, this appeal is listed for admission, the same is taken up for final disposal in the presence of learned counsel for the appellant as well as the contesting respondent, who is plaintiff before the Court below.

6. In this proceedings, subsequent to filing of the appeal, the plaintiff/respondent herein had produced

certain documents to demonstrate that the judgment of the Court below is justified and the same does not warrant interference. The said documents are produced by way of additional evidence by filing an application under Order XLI Rule 27 of the Code of Civil Procedure. This day, the said application is allowed by a separate order and the documents are looked into as and by way of objections of the respondent to this appeal, consisting of a document to demonstrate that Rs.1,65,000/- was paid by the appellant herein to the respondent for her education; the order passed in C.Mis.No.70/2014 which was filed by the mother of respondent/plaintiff in the Court below, along with her five children namely, Mahantesh, Padmini, Pooja, Keerthinath and Sukanya, under Sections 18 to 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, which was disposed of by order dated 01.08.2015; the order dated 03.06.2014 passed on an application filed under Section 23 of the Domestic Violence Act; the judgment dated 18.08.2015 in

M.C.No.15/2014 on the file of the Prl. Judge, Family Court, Gadag, which was filed under Section 9 of the Hindu Marriage Act, by the respondent's mother against the appellant herein, which was allowed by the aforesaid order and the decree drawn thereunder in the said proceedings; the appeal in Crl. Appeal No.16/2014 on the file of the Prl. Sessions Judge, Gadag, and copy of the order sheet maintained in the said appeal; also the plaint in O.S.No.13/2015 on the file of the Senior Civil Judge, Gadag, filed by the mother of the respondent along with her five children for the relief of partition and separate possession seeking 6/7th share in the suit properties in favour of plaintiffs 1 to 6 in the said suit, wherein the appellant herein is the defendant.

7. In the meanwhile, it is also necessary to refer that an application in IA-1/2019 which was filed for production of additional documents by the appellant is already allowed by an order dated 06.09.2019, wherein he has produced a copy of the mortgage deed

to show that he has mortgaged an immovable property to raise funds for the education of the respondent herein who is the plaintiff in the Court below.

8. After hearing the learned counsel for the appellant and the respondent and also on going through the records in O.S.No.12/2014 from which the present appeal arises and also other documents, it is clearly seen that the family of the appellant is divided vertically with appellant herein on one side and his wife and their five children on the other side. As could be seen from the record, the appellant's first son has not studied beyond 10th standard. His second child who is the first daughter and who has completed M.Tech, is the plaintiff in the Court below and the third child is Sukanya who is already married. The fourth child Pooja has studied upto II PUC and has given up her education. The fifth child Keerthinath is said to be pursuing his education. The difference between the appellant and his wife is a long drawn one whereunder there are different litigations pending between them;

out of that one is for maintenance filed by the wife for herself and also on behalf of her five children; the second one is for restitution of conjugal rights and the third one is the suit for partition seeking 6/7th share in the suit properties which are said to be the properties of appellant herein.

9. Admittedly, the suit for partition is still going on wherein the respondent herein is one of the plaintiffs. The petition which was filed under Protection of Women from Domestic Violence Act, has reached finality in providing protection order to the wife and children by order dated 01.08.2015 and it is seen that some of the orders therein are pending consideration before the Principal District and Sessions Judge, Gadag, in Crl.A.16/2014. In this background, the present appeal is filed by the appellant/father of the plaintiff challenging the judgment rendered in O.S.No.12/2014 in awarding a sum of Rs.10,000/- per month to the respondent herein as maintenance and also awarding Rs.15 lakhs towards her marriage

expenses, which is challenged by the appellant father on the grounds referred to supra.

10. In this background, the points that arise for consideration by this Court are:

- i) Whether the Court below was justified in granting maintenance of Rs.10,000/- p.m. to a person who is a qualified Engineer having avocation and income of her own?
- ii) Whether the Court below was justified in quantifying the marriage expenses of the plaintiff/respondent herein to the tune of Rs.15 lakhs payable to her?

11. After hearing the learned counsel for the parties and on going through the documents referred to supra, it is clearly seen that the suit filed by respondent herein in O.S.No.12/2014 is admittedly for the relief of maintenance during the period when she was pursuing her studies. Though, in the petition it was contended that maintenance should be provided until she gets

married and as and when her marriage is fixed, she is required to be paid expenses for the said marriage, when the matter went to trial, the plaintiff has not filed any interim application to frame issue regarding the quantum of marriage expenses that is required to be incurred. The Court below has framed the issues wherein no issue is framed to consider what should be the marriage expenses that is required to be paid to the plaintiff in the said suit. When the evidence which recorded for and on behalf of the plaintiff as PW-1 is looked into, not even a word is uttered by her with reference to the progress, if any, made in performing her marriage and what could be the minimum expenses that is required for the marriage of plaintiff. The entire evidence is silent in that regard. In fact, in the plaint also, there is no pleading to the effect what is the amount of money that is required for her marriage. It is in the absence of the pleadings and supporting evidence, the Court below has proceeded to award marriage expenses to the tune of Rs.15 lakhs.

12. Admittedly, the defendant and his wife Smt.Lathadevi, have in all three daughters i.e., Padmini, the respondent herein and two other are Sukanya and Pooja. The evidence would indicate that Sukanya is already married. If she is already married, there is no evidence on record to show what is the quantum of expenses incurred for her marriage and who has spent that money. So far as Pooja is concerned, she is the youngest of the daughters and she has discontinued her education after II PUC and thereafter, what is she now doing has also not come on record. With this kind of evidence, it is clearly seen that the Court below has proceeded to consider the maintenance as well as the marriage expenses required to be paid by the appellant to the respondent. Whenever, maintenance that is payable to one of the children is to be considered, it should be uniform for all the children. In the instant case, plaintiff in the Court below was already an Engineering graduate as on the date of filing of O.S.No.12/2014 and besides that, she

had already completed two semesters in M.Tech., which would mean that she had only one year left for completion of second year of M.Tech, as stated by herself in the plaint. Even before the suit was filed, her father had paid a sum of Rs.1,65,000/- towards her educational expenses. The appellant herein who is the defendant in the Court below, by way of additional document has also produced a registered document dated 17.03.2014 wherein it is stated that he has mortgaged one of his property to raise loan of Rs.1,65,000/- for the education of his daughter, Padmini, the respondent herein and that the entire amount is already paid to the plaintiff in the Court below as stated by herself in the plaint. With this, what is seen is that the appellant herein has discharged his obligation in providing expenses for education of his daughter.

13. When this matter is taken up for consideration, learned counsel for the respondent/plaintiff would state that the respondent/plaintiff is gainfully employed. If

she is already employed, with masters degree at her hands, her income could not be less than Rs.30,000/- to Rs.40,000/- p.m. Even, if it is taken at Rs.20,000/- to Rs.25,000/- p.m., with that kind of income already available to her, how the Court could saddle the responsibility of paying maintenance to her does not stand to reason. It also further does not stand to reason the amount of Rs.15,00,000/- awarded by the Court below for the marriage expenses of the plaintiff, without there being any pleadings to that effect. There is nothing in evidence to demonstrate that the expenses which is required for the marriage of plaintiff is to the tune of Rs.15,00,000/-. The Court below unilaterally on its own presumes/assumes that the requirement of the amount for marriage of the plaintiff is Rs.15,00,000/-, which amount does not stand to reason in any manner. The aforesaid observation is definitely not an indication to support that the plaintiff in the Court below, is not entitled either for maintenance or for marriage expenses. No doubt, the

relevant provisions of the Act under which the suit was initiated would entitle the plaintiff to secure award for maintenance as well as for marriage expenses. So far as maintenance is concerned, the Court below was justified in awarding certain sum at the initial stage but not after the plaintiff secured a respectable job in a good company earning more than Rs.20,000/- to Rs.25,000/- p.m. for herself. She cannot be pampered with additional sum of Rs.10,000/- towards maintenance. There is already the responsibility on the shoulders of the father to provide maintenance to the other unmarried daughter, who has admittedly discontinued the studies at the stage of II PUC and two other sons who have not yet attained majority and he has to maintain them until they are able to stand on their legs. This observation would strengthen their case in the pending suits wherein they are seeking partition against appellant herein. It is needless to state that, if the respondent herein along with her mother, sisters and brothers, is able to demonstrate

that the properties which are standing in the name of her father and which he has to partition among his wife and children, she would also be entitled for a share which cannot be denied. In this background, what should have been considered by the Court below is the amount which is reasonable and could be considered for the expenses of the marriage of plaintiff, which would have been equivalent to the amount which is spent for the marriage of Sukanya who is already married. In fact, it was the bounden duty of the plaintiff to place evidence before the Court as to the amount which was spent for the marriage of Sukanya, which she has not been able to place. In that view of the matter, in the fact situation, it is clearly seen that the appellant herein has the responsibility of not only performing the marriage of the plaintiff but also the marriage of another daughter Pooja. In the fact situation, it would be reasonable for this Court to consider a sum of Rs.5,00,000/- towards marriage expenses of the plaintiff. While doing so, this Court

would observe that in respect of there being no suit or prayer by Pooja, the other daughter, the same amount of money should also be earmarked for her marriage. This Court while doing so, would further observe that the observation made in this appeal would not absolve the liability of the father to maintain another unmarried daughter Pooja, until she gets married and also the mother of these two daughters, namely Lathadevi, who is the wife of the appellant herein, which they can pursue in the matter which is pending consideration.

14. It is also made clear that the appellant herein is not bound to pay maintenance to the respondent who is the plaintiff in the Court below, since she is already gainfully employed. However, her marriage expenses is required to be paid as and when her marriage is fixed and that the said expenses shall be to the maximum extent of Rs.5 lakhs only. Similar is the situation with reference to the marriage of Pooja. Though, she has not appeared before this Court, this Court is bound to observe that she is also entitled to

such relief. It is needless to say, if Pooja is not gainfully employed, herself and her mother have right to pursue their claim against the appellant herein for maintenance.

15. With such observation, this appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Jm/-