

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 58 of 2013

1. Smt. Geetanjali Parida, aged about 30 years,
W/o- Sri Priyabrat Parida,
of Vill.-Mangalpur, P.S.-Pipili,
Dist-Puri.
2. Pritam Parida, aged about 8 years,
S/o-Sri Priyabrat Parida,
represented through mother guardian,
Smt. Geetanjali Parida, petitioner No.1
of vill.-Mangalpur, P.S.-Pipili,
Dist-Puri
At present residing at Plot No. 47, Unit-4, Sastreenagar,
P.S.-Kharavelnagar, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Sri Priyabrat Parida, aged about 38 years,
S/o-Sri Purna Chandra Parida,
of Vill.-Mangalpur, P.S.-Pipili,
Dist-Puri,
At present:-At/P.O.- Bhawanipatna,
Dist-Kalahandi.

... Respondent

Date of Argument : 20.10.2014

Date of Judgment: 31.10.2014

J U D G M E N T

This order arises out of a petition U/s. 18 of the Hindu Adoption and Maintenance Act, 1956 (in short, the Act 1956) filed by the petitioners for herself against the respondent claiming a monthly maintenance of Rs. 3,000/-

2. The facts of the case of the petitioners are as follows:-

The marriage of the petitioner No.1 with respondent was solemnized as per Hindu Custom and rites in her residence on 07.05.1990 and out of their wedlock one male child namely Pritam @ Bablu petitioner No.2 was born on 27.03.1991. According to petitioner No.1, after one month of the marriage, the respondent took her to his service place at Baliapal. It is averred by the petitioner No.1 that she is the only child of her parents. The der-Tag started in their life when the respondent and his family members tortured her both physically and mentally due to additional demand of dowry and the respondent also claimed to transfer all the movable and immovable property of the petitioner No.1 in his name. It is further averred that the respondent and his family members had driven her out from his house on 21.09.1990 and since then she has been residing with her parents. It is averred by the petitioner No.1 that during her stay at Baliapal when the torture of the respondent became unbearable, she informed about it to her parents and her parents also gifted a land to the respondent at Bhubaneswar in the name of both petitioner No.1 and respondent but the respondent pressurized her for gifting all the lands in his name alone. She has further averred that the respondent illegally married to another girl namely Rashmi Rekha Jena, D/o-Suka Jena of village-Sunahara under Bhandari Pokhari Police Station in the district of Bhadrak. When the torture became unbearable she was forced to lodge an FIR against the respondent which was registered as G.R. Case No. 1394/1993 U/s. 498(A), 34 IPC and Section 4 D.P. Act, which is now pending for disposal in the court of S.D.J.M., Bhubaneswar. The respondent also filed a case for restitution of conjugal rights in the court of Judge, (Sr. Division), Puri vide O.S. No. 454 of 1994 which is pending for disposal. The respondent since the date of desertion has not been providing any farthing to them and she is unable to maintain herself and to bear the educational and other expenses of petitioner No.2. The respondent is working as an Engineer and is getting Rs. 8,000/- per month. Apart from that he is also getting house rent of Rs. 6,500/- at Mangalpur. Besides that he is also getting Rs. 60,000/- per

annum from agriculture. Since the respondent having sufficient means willfully neglected and refused to maintain the petitioners, who are his legally wedded wife and son, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs.3,000/- for both of them from the respondent.

3. The respondent did not enter contest the proceeding and therefore, is set ex-parte.

The following points are formulated to resolve the controversy:-

(i) Whether petitioner No.1 is the legally married wife and petitioner No.2 is the legitimate son of the respondent and the petitioner No. 1 has sufficient cause to live separately from the respondent?

(ii) Whether the respondent having sufficient means has neglected or refused to maintain the petitioners and the petitioners have no independent source of income?

(iii) What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour?

4. The petitioner No.1 in order to prove her case she, herself, has been examined P.W. 1 and relied on two documents i.e. Ext. 1 is the Xerox copy of particulars regarding the parentage of Payal Priyadarshini and Ext. 2 is the Xerox copy of transfer certificate. The petitioner No.1 in her affidavit evidence stated that she married to the respondent on 07.05.1990 and out of their wedlock petitioner No.2 was born on 27.03.1991. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife of the respondent and petitioner No. 2 is his legitimate son.

5. She has also stated that she was subjected to torture not only by the respondent but also by her in-laws and driven out from her matrimonial house on 21.09.1990 when her parents did not transfer the property stands in their name to the name of the respondent and since then she has been residing with her parents along with her son petitioner No. 2. The petitioner

No.1 has stated that the respondent once again illegally married to another lady namely Rashmi Rekha, daughter of Suka Jena of village Sunahara under Bhandaripokhari police station in the district of Balasore and they have also blessed with two daughters. It is also evident from Ext. 1. Therefore, it can safely be concluded that the petitioner No.1 has sufficient cause to live separately from the company of the respondent. Being the husband it is his foremost duty to maintain his legally married wife and son. From the evidence of the P.W. 1 it is forthcoming that she has no independent source of income and she is fully dependent on her parents and the respondent having sufficient means is willfully neglecting to maintain her.

6. The next question for consideration is, whether the respondent has sufficient means and he has willfully neglected and refused to maintain the petitioners. It is stated categorically by the petitioner No.1 in his affidavit evidence that the respondent is now working as Asst. Engineer in G. Udayagir Tumudibandha Block in the district of Khandamal and is getting salary of Rs. 40,000/- per month whereas she is merely a housewife having no separate income and depending upon her parents and also unable to bear educational expenses of her son, petitioner No.2, who is a final year student of SUM Medical College, Bhubaneswar. She has also stated that the respondent has not provided a single farthing to them since the date of her leaving at her parental home. This fact and circumstance is clearly suggestive of the facts that the respondent having sufficient means not only willfully neglected but also refused to maintain the petitioners, who have no sufficient means to support themselves. Therefore, the respondent is liable to provide maintenance to the petitioners.

7. The next question for consideration is the quantum of maintenance. Considering the cost of living and other attendant circumstances, in as much as, the income of the respondent and claim of the petitioner No.1, I feel in the ends of justice and equity, a sum of Rs. 3,000/- per month would be just and proper, which according to me, would not allow the petitioner to lead a

princely and luxury life and also at the same time it would not put the respondent to any vagrancy. Hence ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioners. The respondent is directed to pay a monthly maintenance of Rs. 3,000/- to the petitioner from the date of filing of application i.e. from 18.02.1998. The respondent is further directed to clear the arrear maintenance within two months hereinafter. He is also directed to pay the current monthly maintenance within the 1st week of the succeeding month. Besides that the respondent is also directed to pay litigation expenses of Rs. 5,000/- to the petitioners. Failure to carry out the order by the respondent, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 31th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioners:

P.W.1 Smt. Geetanjali Parida

Witnesses examined for the respondent:

None

List of documents by petitioners:

Ext. 1 Xerox copy of particulars regarding the parentage of Payal Priyalaxmi.

Ext. 2 Xerox copy of transfer certificate.

List of documents by respondent:

Nil

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