

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 10086-10087 OF 2014**

[Arising out of Special Leave Petition (Civil) Nos.35736-35737 of 2013]

Sau Shaila Balasaheb Kadam ..

Appellant(s)

-VS-

Balasaheb Hindurao Kadam and ors. ..

Respondent(s)

J U D G M E N T**C. NAGAPPAN, J.**

1. Leave granted.

2. These appeals are directed against the impugned judgment and final Order dated 3.5.2013 passed by the High Court of Judicature at Bombay in Second Appeal No.348 of 2012 with Civil Application No.666 of 2012 in it.

3. The case of the appellant herein/plaintiff is that she married respondent No. 1 on 6.7.1991 and at the matrimonial home she discovered that respondent No.1 was already married to one Bharati and said fact was not disclosed to her earlier and still she lived with him and became pregnant and after a month ill-treatment started on the pretext that she did not know agricultural work and her parents had not given household utensils in the marriage and she was kept without food starving which resulted in miscarriage. Thereafter the appellant herein prosecuted her husband for cruelty and bigamy etc. and he was convicted and sentenced for the said offences, and she was deserted and uncared for. According to the appellant she was not having any source of income for her livelihood and her husband owned immovable properties and she filed the suit seeking monthly maintenance from him.

4. The respondent No.1 in his written statement admitted that he married the appellant and she is his second wife. He denied the plaint allegations with regard to suppression of his first marriage and the ill treatment of the appellant in the matrimonial home. His

main contention was that she was not his legitimate wife and she is not entitled to claim maintenance from him.

5. The trial court framed six issues and witnesses were examined on both sides and it held that though the appellant/plaintiff is the second wife, she is entitled to maintenance amount of Rs.450/- per month from her husband, and decreed the suit accordingly by creating a charge on the suit properties for the said amount. Respondent No.1 herein/husband preferred appeal and the appellate court held that the plaintiff being second wife, she is not entitled to claim maintenance and allowed the appeal by setting aside the judgment of the trial court and the suit came to be dismissed. The appellant herein/plaintiff preferred the second appeal and the High Court held that the appellant had married the respondent No.1 during the subsistence of his earlier marriage and hence she is not entitled to claim any maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, and rejected the second appeal by holding that there is no substantial question of law which requires its consideration. Challenging the same the present appeals have been preferred.

6. The learned counsel appearing for the appellant contended that the respondent No.1 duped the appellant by suppressing the factum of his first marriage and the provision under Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956, provides for maintenance even to a second wife and the High Court without considering the contentions raised, has rejected the second appeal at the threshold by holding that no substantial question of law arises for consideration and the impugned judgment is liable to be set aside. It is his further contention that in a similar fact situation this Court in the recent decision in **Badshah vs. Urmila Badshah Godse and Another** (2014) 1 SCC 188) held that the husband by suppressing factum of his first marriage duped and married the respondent and hence he cannot be permitted to deny the benefit of maintenance under Section 125 of the Criminal Procedure Code to her, taking advantage of his own wrong and the said ratio is applicable to the present suit filed by the appellant herein.

7. Per contra the learned counsel appearing for the respondent No.1 submitted that the marriage of the appellant with respondent No.1 having a living spouse is a nullity and the said marriage is

therefore, void and the finding of the High Court that the second wife is not entitled to claim maintenance is sustainable in law. The counsel placed reliance on the decisions of this Court in **Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and another** (1988) 1 SCC 530 and **Savitaben Somabhai Bhatiya vs. State of Gujarat and others** (2005) 3 SCC 636.

8. The High Court though recorded the submissions made by the counsel on both sides, have not dealt with the same in proper perspective in the impugned judgment. Of course the recent decision of this Court referred to supra was not available to the High Court at the time of disposal of the second appeal. However, the rejection of the same on the ground of having no substantial question of law arising for consideration, in our view is not proper and the judgment is liable to be set aside. Without expressing any opinion on the merits of the contentions raised, we deem it fit to remit the matter to the High Court for fresh consideration.

9. We accordingly allow these appeals, set aside the impugned judgment and remand the matter back to the High Court and the High Court shall frame the necessary substantial question of law

and after hearing both sides shall dispose of the second appeal in accordance with law at an early date. No costs.

.....J.
(V. Gopala Gowda)

.....J.
(C. Nagappan)

New Delhi;
November 10, 2014.



JUDGMENT