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HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 177 of 2015

(Arising out of judgment/order dated 19.8.2015 in unregistered case of the learned Principal Judge, Family Court, Durg)

Judgment Reserved On : 08/09/2017
Judgment Passed On : 10/10/2017

1. Bharat Lal Sharma S/o Late Choumal Sharma, Aged About 65 Years R/o Mahalaxmi Printing Press Gali, Pachari Para, Durg, Tahsil And District Durg (Chhattisgarh)

2. Smt. Chandrakala Sharma W/o Bharat Lal Sharma, Aged About 62 Years R/o Mahalaxmi Printing Press Gali, Pachari Para, Durg, Tahsil And District Durg (Chhattisgarh)

---- Appellants

Versus

- Smt. Mithlesh Sharma @ Priyanka Sharma Wd/o Late Dilip Kumar Sharma, Aged About 40 Years Peon, Familiy Court, Durg (Chhattisgarh)

---- Respondent

For Appellants : Shri HB Agrawal, Sr. Advocate with Smt. Iturani Mukherjee, Advocate
For Respondent : Shri Sudhir Verma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. In this Appeal under Section 19 (1) of the Family Courts Act, short but interesting question arises as to whether compassionate appointment allowed in favour of the respondent/daughter-in-law would form part of the 'estate of the deceased' so as to entitle the deceased's parents, the appellants herein, to obtain maintenance from the respondent under Sections 20 read with Section 22 of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act').

2. Admittedly, the appellants' only son late Dilip Kumar Sharma was working as Peon in the Family Court, Durg, at the time of his death in harness on 15.8.2009. His widow, respondent – Smt. Mithlesh Sharma @ Priyanka Sharma, applied for compassionate appointment in which the appellants raised a plea that since they were dependent on their deceased son, if the compassionate appointment is allowed in favour of the respondent, who is already residing separate, she should be made liable to maintain them during their life time and should also repay the loan obtained by the deceased. The respondent agreed to maintain the appellants and repay the loan. However, after obtaining the compassionate appointment, she started neglecting to maintain the appellants and eventually, she stopped paying any amount to them.

3. In the above circumstances, the appellants moved an application for grant of maintenance under Section 20 read with Section 22 of the Act. The Family Court dismissed the application at the threshold without even noticing the respondent by holding that compassionate appointment allowed in favour of the respondent is not the 'estate of the deceased', therefore, the provision contained in Section 22 (1) of the Act has no application and prayer for grant of maintenance is not maintainable.

4. We have heard learned counsel for the parties at length and perused the record.

5. In our anxiety to find out a legally permissible ground for allowing maintenance in the appellants' favour, we also summoned the record of the proceedings in which the respondent was allowed compassionate appointment to examine whether, while obtaining compassionate appointment, the respondent had agreed to maintain the appellants. The record contains her consent to maintain the appellants but when she later on refuses to maintain the appellants, the legal question would be whether Section 22 (1) of the Act can be invoked in favour of the appellants to compel the respondents to maintain them.

6. Sections 20 and 22 of the Act would read thus:-

"**20**. **Maintenance of children and aged parents**. - (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation – In this section "parent" includes a childless step-mother.

22. **Maintenance of dependants**. - (1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act."

7. The issue as to whether the status or benefit admissible to dependents of the deceased Government servant on account of the Government servant having died in harness has never been considered to be the estate of the deceased. The Supreme Court in the matter of **Smt. Violet Issaac and Others Vs. Union of India and Others** {(1991) 1 SCC 725} referred to its earlier decision in **Jodh Singh Vs. Union of India** {(1980) 4 SCC 306} to hold in para-5 thus:-

> "5. In Jodh Singh v. Union of India (Supra), this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed : (SCC p.310, para 10)
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> "Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."
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> The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition."

8. The above view has been reiterated by the Supreme Court in a very recent judgment in the matter of **Nitu Vs. Sheela Rani and Others** {Civil Appeal No.9823/2016, decided on 28.9.2016} to hold that the family pension cannot be bequeathed by a will as it does not form part of the estate of employee.

9. Section 22 (1) of the Act obligates the heir of the deceased Hindu to maintain dependents of the deceased out of the estate inherited by them from the deceased and that where the dependent has not obtained, by testamentary or intestate succession any share in the estate of a Hindu, the dependents shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate. The provision is thus clear like a rising sun that heirs of a Hindu shall be bound to maintain the dependent only when he or she has inherited the estate of the deceased.

10. Applying the law laid down by the Supreme Court in the matters of **Smt. Violet Issaac**, **Jodh Singh** and **Nitu Vs. Sheela Rani** (Supra) we find that compassionate appointment is never available to a Government servant during the tenure of his service. It is a status or benefit which a definite class or dependents of the deceased are entitled for under the executive policy of the Government, therefore, neither the deceased can dispose of this benefit through a

will nor the said facility of compassionate appointment can be treated as estate of the deceased. Therefore, the respondent being a recipient of the compassionate appointment, which is not part of the estate of the deceased, is not obliged in law to maintain the appellants from the salary which she is receiving through compassionate appointment. The respondent may be morally liable and duty bound to maintain her parents-in-law but the Court cannot compel her to grant such maintenance under Section 22 (1) of the Act. It was not proper on the part of the respondent to have neglected her parents-in-law who have lost their only son. However, we are helpless in this Appeal to come to the appellants rescue. Their remedy may lie elsewhere either by way of invoking writ jurisdiction or otherwise, for which the appellants would be at liberty to prosecute such remedy as is available to them.

11. In view of the above, the Appeal stands dismissed subject to the above liberty.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Chandra Bhushan Bajpai)

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