Maintenance claims of *de facto* spouses—Gunvantray v. Bai Prabha

Gunvantray v. *Bai Prabha*[1] causes hardship to parties to divorce and nullity decrees, as it denies maintenance in a number of cases under section 25 of the Hindu Marriage Act, 1955[2]. There a marriage was annulled on the ground of wife's impotency. Subsequently, she filed a petition for maintenance which was allowed by the lower appellate court. On revision, V. B. Raju, J., was of the view that an order for permanent alimony would not lie on an application made subsequent to the passing of a decree for dissolution of marriage or nullity of marriage. In coming to this conclusion, the learned Judge reasoned as follows:

"Section 25 contemplates the passing of an order for permanent alimony either at the time of passing *any decree* or at any time subsequent thereto. But the section further provides that the application made for the purpose must be by either the wife or the husband..... It is, therefore, clear that if permanent alimony or maintenance is claimed subsequent to the decree under the Act, the application must be by the wife or the husband as the case may be. In other words, if the order is to be passed subsequent to the passing of the decree, the application can be made only in proceedings for the restitution of conjugal rights or for judicial separation. If an application for permanent alimony or maintenance is made subsequent to the passing of the decree, it cannot be made by a person who is a party to proceedings for divorce or for nullity, *because after the decree the parties cease to be related as husband and wife.*[3] I am, therefore, of the view that under s. 25 no

1. A.I.R. 1963 Guj. 242.

2. Section 25: (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for that purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income or other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on immovable property of the respondent.

3. It is submitted that this statement proceeds from a misconception in so far as it relates to void marriages annulled by decrees of nullity. "A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it." *Latey on Divorce*, p. 193 (Ed. X).

application for permanent alimony or maintenance can be made subsequent to the passing of the decree for dissolution or annulment of marriage by a decree of nullity.[3a]

This decision is at variance with the views expressed by some other High Courts. Thus, in *Mina Rani* v. *Dasarath*,[4] Bachawat, J., observed:

"In the context of Sec. 25 the expression 'any decree' means any of the decrees referred to in the earlier provision of the Act, *i.e.*, any decree for restitution of conjugal rights, or of judicial separation, or of nullity of marriage or of divorce passed under Secs. 9 to 14 of the Act." In the same case Law, J., stated: "It cannot be controverted that maintenance can be granted under the Act to either party to the marriage at the time or after passing of a decree for restitution of conjugal rights or for judicial separation or for nullity of marriage or divorce."[5]

Similarly Ramachandra Iyer, C.J., in *Seshadri* v. *Jayalaxmi*[6] referring to section 25 observed that "the opening words of the section makes it clear that the power of the Court thereunder could be invoked after any decree is passed under the Act". The observations of Desai, C.J., in *Hira Lal* v. *Lilavati*[7] are also to the same effect.

It is submitted that the view of the learned Judge in *Gunvantray* v. *Bai Prabha* fails to give weight to the words "or at any time subsequent thereto". If it is accepted (as was done by the Judge) that the words "any decree" comprehend the decrees for restitution of conjugal rights, judicial separation, nullity or dissolution, it is difficult to understand how the same construction could not be given to the words following it "or at any time subsequent thereto."

The other question that calls for consideration is whether the words "wife" and "husband" occurring in section 25 are to be construed in isolation or whether they should be understood as "wife" and "husband" for the purpose of "any decree" referred to in the same section. It is submitted that the expressions "wife" and "husband" should not be torn off the context but should be viewed in conjunction with the words "any decree"; that is, they should be taken to mean "wife" and "husband", as they have been *de facto* treated as "wife" and "husband" in "any decree" referred to in the section. It may be of interest to note that even in section 24 which deals with maintenance

3a. A.I.R. 1963 Guj. 242 at p. 243.
4. A.I.R. 1963 Cal. 428 at p. 429.
5. A.I.R. 1963 Cal. 428 at p. 429.
6. A.I.R. 1963 Mad. 283 at p. 286.
7. A.I.R. 1961 Guj. 202 at p. 205.

pendente lite, the words "wife or the husband" have been used in connection with "any proceeding". Could it be said that maintenance *pendente lite* cannot be granted in cases of *prima facie* void marriages as they are void *ab inito?* It is difficult to imagine that such a startling result had been contemplated by the legislature. A consideration of English decisions and interpretations given to legislative enactments reveals that the terms husband and wife in matrimonial enactments may have to be construed as *de facto* husband and *de facto* wife. (See, *Ramsayn* v. *Ramsay*[8] and *Gullan* v. *Gullan*[9] dealing with nullity decrees and maintenance claims under the Matrimonial Causes Act, 1907).

This apart, from a functional angle there may be occasions when a court may have to invoke the provisions relating to grant of maintenance long after the passing of a decree of dissolution or nullity of marriage. *Deacock* v. *Deacock*[10] is an illustrative case. There the husband obtained a decree for dissolution of marriage in 1943 on the presumption of death. The wife heard nothing about the petitioner until 1950. She filed an application for maintenance in 1956. The Court of Appeal held that the Court had jurisdiction to grant maintenance under section 19(2), (3) of the Matrimonial Causes Act, 1950.[11] Hodson and Morries, L.JJ., were clearly of the view that the application for maintenance was made "on" a decree for divorce or nullity of marriage within the terms of s. 19(3). It is to be noted that the language of section 25 of the Hindu Marriage Act "at the time of passing any decree or at any time subsequent thereto" is wider than the corresponding language of the English Statute. To say that maintenance cannot be granted after the passing of a decree of nullity or dissolution of marriage is to read into the section what is not contemplated by the legislature.

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8. 108 L.T. 382.

9. (1913) P. 160.

10. [1958] 2 All E.R. 633.

11. Section 19(3) "On any decree for divorce or nullity of marriage, the Court may, if it thinks fit, by order direct the husband to pay to the wife, during their joint lives, such monthly or weekly sum of maintenance and support of the wife as the court may think reasonable.....

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