

Therefore, we proceed to appreciate the facts of the case in the light of the aforesaid observations.

(8) Adverting to the facts of the case, we find that the entire material was already with the Income Tax Officer when he framed assessment and re-assessment proceedings he only wanted to change his opinion. Merely change of opinion does not give jurisdiction to initiate re-assessment proceedings, and even if the order of the Income Tax Officer is erroneous, the remedy would lie elsewhere but not by initiating re-assessment proceedings. Accordingly, we are of the opinion that the Tribunal was justified in holding that the re-assessment proceedings for the assessment year 1972-73 were not validly reopened and we answer the referred question in favour of the assessee, in the affirmative.

(9) Now adverting to the other question referred for the assessment year 1974-75, we find that the Tribunal had the power to remand the case to the Income Tax Officer for fresh decision. The proceedings for this year were not reassessment but assessment proceedings. The crucial point would be to find out the nature of advance to the partners and then to frame assessment. No definite finding was given either by the Income Tax Officer or by the Appellate Assistant Commissioner, and, therefore, the Tribunal was right in remanding the case to the Income Tax Officer for fresh disposal. Accordingly, we answer the question referred for the assessment year 1974-75 in favour of the Revenue, in the affirmative.

(10) In view of the divided success, the parties are left to bear their own costs.

S.C.K.

Before : J. V. Gupta, J.

NEERU BALA AND OTHERS,—*Petitioners.*

versus

SMT. PUSHPINDER ALIAS BABLI,—*Respondents.*

Civil Revision No. 2595 of 1988

June 1, 1989.

Code of Civil Procedure (V of 1908)—O.1, Rl. 10—Wife's suit for grant of maintenance—Application by minors through their grandfather for being impleaded as party—Right of such minors to be impleaded—Application rejected.

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Held, that the application has been filed by the minors through their grand-father as they are living with him. In case they also claim any maintenance, they will be entitled to file a separate suit for the said purpose. In any case, in the event the suit filed by the wife is decreed against her husband, the interests of the minor will be kept in view while passing the decree. There is thus no justification for interfering with the impugned order in the revisional jurisdiction.

(Para 5).

Petition under Section 115 C.P.C. for revision of the order of the court of Shri B. R. Bansal, P.C.S., Addl., Senior Sub Judge, Sangrur; dated 7th October, 1988, dismissing the application.

CLAIM : *Petition for permission to sue as indigent person for the recovery of maintenance at the rate of Rs. 500 per month with effect from 2nd August, 1987 and for creating a charge on agricultural land owned by defendant with particulars given as under :—*

- (i) *1/12 share in land measuring 19 bighas 14 biswas comprising of khasra No. 736/2/2-4, 738/2-6, 739/5-3, 740/8-11, 741-1/1-10, khewat/khatauni No. 216/491 situated in village Aloarkh ;*
- (ii) *1/30 share in the land measuring 14 bighas 12 biswas comprising of khasra nos. 175/8-02, 175/9/0-2, 460/75/0-4, 748/1/3-11, 747/1/5-15, 746/4-18, khewat/khatauni Nos. 218/494, situated in village Aloarkh;*
- (iii) *1/6th share in the land measuring 37 kanal 16 marlas comprising of khasra Nos. 3/22/3-2, 10/5/5-8, 6/1/3-15/11/1/7-18, 2/6-18, 9/4-11, 10/6-4, Khewat/Khatauni No. 3/41 situated in village Panj Beeri;*

AND

Suit for permanent injunction restraining the defendant-respondent from alienating the suit land in favour of any person in any manner whatsoever.

CLAIM IN REVISION : *For reversal of the order of lower court.*

P. K. Palli, Sr. Advocate with Mrs. Rekha Palli, Advocate, for the petitioners.

Joginder Singh, Advocate, for the respondent.

JUDGMENT

J. V. Gupta, J.

(1) This revision petition is directed against the order of the trial Court dated October 7, 1988, whereby the application filed by the sons of the plaintiff under Order I rule 10, Code of Civil Procedure, was dismissed.

(2) Shrimati Pushpinder *alias* Babli wife of Krishan Chand, filed the suit for the grant of the maintenance in *forma pauperis*; requisite permission for which was granted. During the pendency of the suit, Neeru Bala and Kuldip Kumar, minors, under the guardianship of their grandfather moved an application for being impleaded as parties to the suit alleging that they were living with their grandfather; they were necessary parties and that they were entitled to the grant of the maintenance from the agricultural land of their father Krishan Chand. That application was opposed by the plaintiff on the ground that they were not necessary parties. Hukam Chand, their grandfather, had no *locus standi* to file the application as such an application should have been filed either by the defendant Krishan Chand, being their father. Moreover, the children were living with the grandfather and, therefore, the question of grant of maintenance as such to them did not arise. In any case, they could file a separate suit, if so liked. By impleading them as parties to the suit under the guardianship of their grandfather, her suit will be unnecessarily delayed. The trial Court dismissed the said application with the observations that a person cannot be added as a defendant merely because he would be incidentally effected by the judgment.

(3) The learned counsel for the petitioners submitted that since the charge is likely to be created on the land belonging to their father in case the plaintiff's suit for maintenance is decreed, the rights of the minors will be also affected and, therefore, they are necessary parties to the suit.

(4) After hearing the learned counsel for the parties, I do not find any justification for interfering with the impugned order in the revisional jurisdiction.

(5) The application has been filed by the minors through their grandfather as they are living with him. In case they also claim

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any maintenance, they will be entitled to file a separate suit for the said purpose. In any case, in the event the suit filed by the wife is decreed against her husband, the interests of the minors will be kept in view while passing the decree. With these observations this revision petition fails and is dismissed with no order as to costs. Since further proceedings were stayed at the time of the motion hearing, the parties are directed to appear in the trial Court on June 5, 1989.

S.C.K.

Before : J. V. Gupta, J.

KAMLESH ARORA,—Petitioner.

versus

JUGAL KISHORE ARORA,—Respondent.

Civil Revision No. 892 of 1989

June 1, 1989.

Hindu Marriage Act (XXV of 1955)—S. 24—Minor daughter living with mother—Application for the grant of maintenance for minors—Such application—competency of.

Held, that the minor daughter was entitled to maintenance in an application under Section 24 of the Hindu Marriage Act, 1955. In not granting any maintenance to the minor child the Ld. District Judge acted illegally and with material irregularity in the exercise of his jurisdiction. Consequently, it is directed that the application filed by the wife under S. 24 of the Act for claiming maintenance for her minor daughter be decided afresh and the necessary maintenance be granted from the date of application.

(Para 4).

Petition under Section 115 C.P.C. for the revision of the Order of the Court of Shri K. K. Aggarwal, District Judge, Bhiwani, dated 1st March, 1989 ordering that at least Rs. 1,000 (one thousand) should be paid by the husband to the wife as litigation expenses.

Claim:—Petition under Section 13 of Hindu Marriage Act, 1955.

Claim in Revision:—For reversal of the order of lower Court.

O. P. Goyal with S. S. Sallar, Advocates, for the petitioner.

J. C. Nagpal, Advocate, for the Respondent.