

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

SR. NO.210

CR-2569-2013

Decided on: 15.05.2015

Shobha Rani and othersPetitioners

VS

Dharam SinghRespondent

CORAM HON'BLE MR. JUSTICE K.KANNAN

Present: Mr.R.M.Chauhan, Advocate for the petitioner.
Mr. Yogesh Chaudhary, Advocate for respondent.

K.KANNAN, J

The petition is against the order of dismissal for interim maintenance in a suit for maintenance. The Court has declined relief on the ground that the entitlement to maintenance will be considered in the suit and it cannot be pre-judged.

Before arguments got under way, I asked the counsel to show whether deceased husband had any property held jointly with his father namely the plaintiff's father-in-law. This is in the context of Section 19 of the Hindu Maintenance Act which contemplates a provision for maintenance only from the estate of her husband or her father, her mother or from her son, daughter or her estate. Clause 2 of Section 19 states that an obligation to maintain under Section 19(1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession. It has to be, therefore, established that there is coparcenary property, out of which the obligation arises and such property is sufficient for providing the means. There is an expressed averment in para 5 of the plaint that plaintiffs are coparcenary and the father-in-law has denied it in his written statement and contended that it is all a separate property. The counsel refers to a judgment of this Court in **Balbir Kaur v. Harinder Kaur 2003(1) RCR (Civil) 624** that maintenance can be enforced even against the self acquired property of the father-in-law. The decision of Allahbad High Court in **Smt. Raina v. Hari Mohan Budhaulia 2005(3) RCR (Civil)**

129 is also cited before me that wife is entitled to claim maintenance for her and her children against deceased husband's father.

The applicability of the judgments will have to be decided at an appropriate time of the trial of the suit and I cannot take this at this stage to make possible for the wife to claim maintenance in the light of the express provision of Section 19(2) of the Hindu Marriage Act, 1956.

This matter will be considered at an appropriate time when the suit is disposed of.

I find no reason to interfere with the interim order rejecting the claim for interim maintenance.

Petition is dismissed.

15.05.2015
mamta

(K.KANNAN)
JUDGE