

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 1938 of 2015 (O&M)
DATE OF DECISION :- July 28, 2015

Smt. Mala Budhwar @ Vaijantimala ...Appellant.

Versus

Smt. Seema Budhwar and others ...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present:- Mr. Ajay Jain, Advocate for the appellant.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. This is an appeal preferred by the 1st defendant in the suit aggrieved by the maintenance awarded to the plaintiffs therein as against the 2nd defendant.
2. The 1st plaintiff being the daughter in law and the 2nd plaintiff being the grand son of the defendants, preferred a suit before the trial Court invoking the provisions under Section 19

and 22 of the Hindu Adoption and Maintenance Act, 1956 seeking maintenance allowance at the rate of ₹10,000/- per month by creating a charge over the property namely House No. 34, Ward No.10, Hari Nagar, Hisar.

3. On a perusal of the judgment, we find that the trial Court has declared that the 1st plaintiff and the 2nd plaintiff are entitled to maintenance at the rate of ₹1500/- per month each from the 2nd defendant from the date of filing of the suit and passed a decree accordingly. Of course, the 2nd plaintiff is entitled to get maintenance till he attains majority and plaintiff no. 1 is entitled to get maintenance till 28.7.2014.

4. We find that there is no finding recorded by the trial Court as against the 1st defendant who has now chosen to prefer an appeal. A decree also was passed by the trial Court only as against the 2nd defendant directing him to pay maintenance at the rate of ₹1500/- per month each to the 1st and 2nd plaintiffs.

5. We posed a question to the counsel appearing for the appellant as to how the appellant being the 1st defendant against whom no finding was recorded and no decree was passed, can maintain an appeal before this Court. Counsel appearing for the appellant would submit that the 1st defendant has preferred an appeal as the plaintiffs have sought a relief

that the maintenance which would be awarded by the trial Court shall have a charge over the property of the 1st defendant.

6. Inasmuch as no finding was recorded as against the 1st defendant and no decree was also passed as against her creating a charge over the property of the 1st defendant, in our considered view, the 1st defendant cannot maintain the present appeal. Therefore, the appeal stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(RAJ RAHUL GARG)
JUDGE**

July 28, 2015
p.singh