WEB COPY NOT OFFICIAL

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.225 of 2016

==========

Brajendra Nath Ojha

.... Appellant/s

Versus

Kishori Devi

.... Respondent/s

==========

Appearance :
For the Appellant/s : Mr. Ajay Kumar Tiwary
For the Respondent/s : Mr.

==========

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 24-08-2016 Heard the learned counsel, Mr. Chandra Kant for the petitioner and the learned counsel, Mr. Arun Kumar Rai for the respondent.

It appears that application under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 was filed by the respondent against her father-in-law, the petitioner, Brajendra Nath Ojha.

According to the respondent, she has no residence and, therefore, she wants to reside in her sasural but she apprehends if she will reside there, the father-in-law may assault her and, therefore, the learned Court below by order dated 05.05.2016 directed that the respondent is permitted to go to her sasural and further directed the respondent to approach the local police if any hindrance is put by the petitioner.

The learned counsel, Mr. Chandra Kant for the petitioner submitted that the Court has no jurisdiction to permit the widowed

daughter-in-law to reside along with the father-in-law against the wish of the father-in-law. Moreover, she is entitled to maintenance and the petitioner is ready to provide money so that the respondent may take a house on rent. The learned counsel further submitted that if at all she is entitled for residence then she can move under the Domestic Violence Act, 2005 but in the present case, under Section 19, the Court has no jurisdiction to allow the respondent to reside in the residential building. The learned counsel further submitted that in view of the decision of the Supreme Court AIR 1962 Supreme Court 527, the Court should have rejected the application and should not have permitted the respondent to go and reside in the residence of the petitioner in view of the fact that instead of moving under the Domestic Violence Act, 2005, the respondent is moving under the Hindu Adoption and Maintenance Act.

On the other hand, the learned counsel for the respondent submitted that the husband was residing in the building and right of maintenance includes right to residence and, therefore, the Court below has only permitted the respondent to reside in the house. The Court has the jurisdiction to pass the order under Section 19. According to the learned counsel, AIR 1962 Supreme Court 527 is not applicable in the present case. The learned

counsel further submitted that the petitioner intentionally is not allowing the respondent to reside in the house of flimsy grounds. When the Court below has only permitted the respondent and directed her to approach police, if hindrance is put by the petitioner, there is no question of invoking jurisdiction under Article 227 arises.

Section 19 of the Hindu Adoptions and Maintenance Act, 1956 reads as follows:

> **19. Maintenance of widowed daughter-in-law – (1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:**
>
> **Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-**
>
> **(a) from the estate of her husband or her father or mother, or**
>
> **(b) from her son or daughter, if any, or his or her estate.**
>
> **(2) Any obligation under sub-section(1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.**

From perusal of the impugned order, it appears that Court below has only permitted the respondent to go and reside in the house as the application was filed by her desiring to go to sasural.

In this matter, reference be made to the decision of Punjab & Haryana High Court, **AIR 2003 Punjab & Haryana 174(Balbir Kaur and another v. Harinder Kaur and others)**, the Punjab & Haryana High Court has held that "the maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head."

In view of the above position, I do not find any jurisdictional error in the order passed by the Court below so as to call for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	