

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15964 of 2015

=====

Ganga Bishun Sah

.... Petitioner/s

Versus

Most. Manorama Devi & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 28-07-2016

Heard learned counsel, Mr. Sunil Kumar, appearing for the petitioner and learned counsel, Mr. Abhishek appearing for the respondents.

2. It appears that the maintenance case under Section 19 of the ***Hindu Adoption and Maintenance Act, 1956*** was filed by the respondent praying for the maintenance from the petitioner i.e. father-in-law of respondent No.1. The court below by the order dated 30.07.2015 passed in maintenance case No. 5(N) of 2014 directed the father-in-law petitioner to pay Rs. 5000/- per month as maintenance.

3. Section 19 of the Hindu Adoption 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”

4. In view of this provision, if father-in-law is in possession of coparcenary property out of which the daughter-in-law has not obtained any share then only the father-in-law will be liable to maintain his daughter-in-law.

5. From perusal of the impugned order, it appears that the court below has not at all recorded any such finding as to whether the petitioner is in possession of any joint family property and the husband of the respondent No.1 had any share in it or not. The court below has passed the order only on the ground that the

petitioner has the capacity to purchase lands. Therefore, he is liable to maintain his daughter-in-law.

5. In view of the above position, this writ application is allowed. The impugned order is set aside. The matter is remanded back to the court below to pass a fresh order according to law after hearing both the parties.

6. With the aforesaid observation, this writ application is disposed of.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--