

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.497 of 2015

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Ram Prasad Sahni, S/O- Late Laxman Sahni, Resident of Village- Jagadishpur,
P.S.- Mannigachhi, District- Darbhanga.

.... O/party/ Appellant

Versus

1. Most. Punita Devi, W/o- Late Sushil Kumar Sahni, D/o- Bidhnath Sahni,
2. Manish Kumar Sahni, S/o- Late Sushil Kumar Sahni,
3. Abhishek Kumar Sahni, S/o- Late Sushil Kumar Sahni,
4. Shikha Kumari, D/o- Late Sushil Kumar Sahni All are R/V- Nehara, P.S.-
Manigachhi, District- Darbhanga.

.... Petitioners.... Resp.

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Appearance :

For the Appellant : Mr. Ajay Kumar, Advocate

For the Respondents : Mr. Girish Chandra Jha, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 22-06-2017

We have heard the parties and perused the records of this case.

This appeal has been preferred assailing the judgment dated 17.07.2013 delivered in Maintenance Case 241/2010 by the Principal Judge, Family Court, Darbhanga.

The respondents filed an application under Sections 21 and 22 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as “the Act”) demanding maintenance from the father-in-law of the respondent no.1 in the facts and circumstances, the husband, i.e., the son of the appellant, died on 17.11.2010 leaving behind her and two sons and one daughter, who have been impleaded



as respondent nos.2, 3 and 4 respectively in this case. It is also stated in the application that applicant no.1 was married to late Sushil Kumar Sahni, i.e., the son of this appellant on 13.07.2000. Allegations have been made in the application filed for the maintenance of assault and torture by the father-in-law along with the daughter and his son-in-law also stating that on 29.11.2010, all of them tried to kill her in the manner stated in the paragraph no.6 of the application and subsequently drove her out of the matrimonial house. There was 'panchayati' also but the opposite-party appellant was not ready to accept her in his house. As a result, applicant no.1 along with sons and daughter was compelled to reside at her father's place. It is further stated in the application that the opposite party-appellant had only one son who was having property such as orchard, cattles, pond (jalkar). After his death, the father is trying to grab everything and even grabbed the "Stridhan" due to which now the applicant has reached the stage of starvation. It is further stated in the application that the applicant is not at all able to maintain herself or her children. She has disclosed in paragraph 13 of the application that the appellant has 4 bighas of agricultural land, 3 khatas of household and 16 kathas of orchard and one pond. Further that he is earning from fishery and Makhana cultivation. That apart, he is also having 2 cows and in total is having income of Rs.35,000/- to 40,000/- per month. Still he is not maintaining his grandsons, granddaughter and daughter-in-law.



Applicant-Respondent No.1 has demanded Rs.16,000/- per month in the application for maintenance of herself and children.

Notices were issued to the opposite party-applicant who appeared and replied refuting all the allegations. The factum of marriage of the deceased son of the opposite party-appellant and the applicant-respondent no.1 on 13.07.2000 as also the factum of natural death of his son on 17.11.2010 were admitted. He has also admitted that the applicant has two sons and one daughter from the wedlock with the deceased who are minor and living under her guardianship. So far as the other allegations are concerned, they have been specifically denied. In the reply, though it is further admitted that applicant was living with her parents, but at the same time, it has been disclosed that the daughter and son-in-law of the opposite party-applicant were living at their own house so such allegation of involvement of his daughter and son-in-law in this matter has specifically been denied. The factum of Panchayati has also been denied. The opposite party-appellant has specifically denied that he has any cultivable land or animal or tank or jalkar, rather he has stated that he has one unmarried daughter but he does not have any money to arrange her marriage as he is merely a daily wage earner. He has also stated that the applicant – respondent no.1 left the house of the opposite party just after the death of his son and she is working as Anganwari Sevika for the last several months. On the



legal aspect, statement has been made that widow daughter-in-law or her children cannot seek any maintenance under Section 125 of the Cr.P.C. or under any law as the father-in-law does not come into the ambit of Section 125 Cr.P.C. for that purpose.

On the aforesaid factual matrix, the court below though did not frame specific issues but after discussing the cases of the parties, it came to the finding that actually under wrong notion, the petition was admitted under Section 125 Cr.P.C, as the maintenance petition has filed and, thus, should be treated under Sections 21 and 22 of the Act. It has recorded a finding that opposite party-appellant is liable to maintain the daughter-in-law as well as the grandsons and granddaughter under the aforesaid provision of the Act and fixed Rs.1,000/- per month as maintenance for the applicant no.1 and Rs.300 per month for the maintenance of her children, which would be recoverable from the date of passing of the judgment and to be paid in future in the first week of the English calendar. The matter does not end here. It further appears that another file was opened for execution of the order and ultimately, after the opposite party-applicant had shown inability to pay the amount fixed, he was directed to be sent to prison and serve custody for a period of one month, i.e., up to 24.10.2015. To our utter surprise, this direction appears to have been given under Section 125 of the Cr.P.C. though in the judgment the court below has specifically stated that it is not a



case under Section 125 Cr.P.C. rather the case was considered to be a case of maintenance filed under Section 21 read with 22 of the Act.

Learned counsel appearing for the appellant has drawn attention of this Court towards several fatal lacuna in the procedure adopted and the judgment under appeal. It is contended that though Section 22 of the Act has been quoted in the judgment but nothing has been recorded as to how that would be applicable in the present case. That apart, when it became admitted that applicant was working as assistant in Anganwari then how a person who does not have any means to maintain himself, has been found liable to maintain her and under which provision of law. Without appreciation of such materials on record, he has been held to be liable to pay maintenance whereas the fact is that the petitioner is a rickshaw puller and would not be able to pay Rs.1300/- maintenance. He was sent for imprisonment of one month also.

On appreciation of rival contention, in our opinion, following issues emerge for adjudication of this case:-

- (i) Whether the husband of the applicant died leaving behind any property which is in control of his father?
- (ii) Whether appellant-opposite party had any means to maintain the applicant from the co-parcenary property in his possession?
- (iii) Whether the father, i.e., opposite party-appellant has



any means to maintain his grandchildren and daughter-in-law?

All the aforesaid issues, being intertwined, have been considered together.

For better appreciation, the relevant provisions as enshrined under Sections 19, 21 and 22 are extracted as under:-

“ 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.

21. Dependents defined- For the purposes of this Chapter "dependents" mean the following relatives of the deceased:-

- i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not remarry;
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother;
- (v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;
- (vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-
 - (a) from the estate of her husband; or
 - (b) from her son or daughter, if any, or his or her estate; or
 - (c) from her father-in-law or his father or the estate of either of them;
- (vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that



she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate; (viii) his or her minor illegitimate son, so long as he remains a minor; (ix) his or her illegitimate daughter, so long as she remains unmarried.”

22. Maintenance of dependants.—

(1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.”

From perusal of the provision contained under Section 19, it would emanate that the Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law provided she is unable to maintain herself out of her own earnings or other property or is unable to obtain maintenance from the estate of her husband or her father or mother or from her son or daughter or his or her estate. However, at the same time, sub-Section (2) of Section 19 also lays down that any obligation under sub-section (1) shall not be enforceable if the father-in-law has no means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share. Similarly, sub-Section



(1) of Section 22 lays down that subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. However, at the same time, sub-section (2) lays down that where a dependant has not obtained by testamentary or intestate succession, any share in the estate of Hindu after his death, he shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate. Section 21 defines who are the dependants.

Now, the question arises as to whether the applicant has been able to prove that her husband left behind the estate which she has inherited but is not in possession and whether the father-in-law is in possession of such estate? For better appreciation of this, the evidence led by the respective sides requires to be analyzed. The applicant-respondent no.1 has examined herself as AW 2. Though she has stated that she does not have any means to maintain herself and has also stated that the father-in-law has 6 kathas of agricultural land and pond and he is running a business of fishery and Makhana and also an orchard and from the aforesaid he is earning Rs.10,000/- per month, if it is compared to the statement made in her application, to some extent, it falsifies the same as she has categorically stated in paragraph no.13 of the application that her father-in-law's earning is about Rs.35,000/- to Rs.40,000/- per month. On the point of torture and being thrown out of the house, a question was asked in the cross-



examination as to whether on such act done by the father-in-law with the help of his daughter and son-in-law, she filed any complaint case or first information report to which she denied. In the cross-examination, she further states that there is no land or any property in the name of her deceased-husband and she could not show any document or paper in support of her case that the father-in-law is possessing land or orchard and pond etc. She also denied that she could produce any document in support of her contention regarding the monthly income of the father-in-law. She has admitted that she is working as Angawari Sahika and is getting Rs.700/- per month. Now it is interesting to peruse the deposition of AW 1 who happens to be the father of the applicant - respondent no.1. He, in his examination-in-chief, has also stated the factum of marriage, the death of his son-in-law and also that she does not have any means to maintain herself and her children and also that she has been driven away forcibly after assault by the father-in-law. He has categorically stated that Ram Prasad Sahani, i.e., appellant-opposite party has 26 kathas of land and orchard and his earning is Rs.30,000/- to Rs.35,000/- from the aforesaid property. However, in the cross-examination, he has admitted that though his daughter was driven away but he and his daughter did not file any case and there was no property in the name of his deceased son-in-law and also admitted the fact that his Samdhi, i.e., father-in-law of his daughter, is pulling rickshaw for his



livelihood. He has also stated that he does not have any document regarding any landed property of his Samdhi and at the same time, has also admitted that his daughter was working as Anganwari Sahiaka in his village and she is doing so for the last 15 years which demolishes his statement in examination-in-chief that she does not have any earning to maintain herself.

The appellant, who has been examined as OPW 1, has stated in his Chief that immediately after the death of his son, the daughter-in-law along with her children went to her Naihar. He does not have any landed property or pond etc. He is only having one thatched house and is having one minor daughter who is to be married but he does not have any means for her marriage and his income is Rs.50/- to Rs.60/- daily. Thus, he is unable to maintain his daughter-in-law, grandsons and granddaughter. In the cross-examination, he has stated that his son, though he was a student, used to do tuition to maintain him and his family. From the perusal of the aforesaid, it is apparent that the applicant as well as her father could not withstand the test of cross-examination and her case was demolished. They could not spell out the details of any landed property. Her father denied in the cross-examination that his son-in-law had any landed property. Thus, it has to be understood that her husband died without leaving any estate. He has also admitted that his Samdhi, i.e., father-in-law of his daughter earns his livelihood by



pulling a rickshaw and does not have sufficient means to pay the maintenance amount. Thus, the case of the applicant-petitioner-respondent no.1 does not withstand the legal test under Section 19 or Section 22 of the Act as apparently there is no estate which she has inherited from her husband and even father-in-law is not having sufficient income to maintain her.

Though the materials were available as discussed above, the court below has also not recorded any finding as to whether the opposite party no.1 has sufficient means to maintain herself or not as it has come in the evidence led by the parties that she is working as Aganwari Sahaika for the last 15 years. It is also apparent from the order dated 04.02.2011, passed in the maintenance case that at the time of reconciliation, the father-in-law was ready to take her back but it was the applicant who refused to go with him though she has given a reason that there was threat upon her life but in view of the fact that the said action could not be proved by her, that would also be meaningless.

Unfortunately, the court below without recording any finding whether the husband has left any estate for the applicant or whether her father-in-law has sufficient income or not, has simply directed him without any rhyme and reason to pay maintenance of Rs.1,000/- for applicant no.1 and Rs.300/- per month towards maintenance of her children without holding as to whether the father-



in-law is liable in law and in the facts and circumstances to pay such amount or not.

In our opinion, the impugned judgment is not at all sustainable in the eye of law.

Accordingly, this appeal succeeds. The judgment under appeal is set aside.

However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Spd/-/Sanjay II

AFR/NAFR	AFR
CAV DATE	NA
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