

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No. 5 of 2014****Judgment Reserved on 12.04.2017****Judgment Delivered on 05.05.2017**

Kunti w/o late Mewalal aged 32 years, R/o village Bapupara Tehsil Podiuproda, District Korba, Chhattisgarh.

---- Appellant**Versus**

Ghoorsai S/o Purshotam aged 55 years, R/o village Bapupara, Tehsil Podiuproda, District Korba, Chhattisgarh.

---- Respondent

For the Appellant	:	Ms. Samisti Soloman, Advocate.
For the Respondent	:	Shri Vikas Pandey, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV Judgment****Per R.C.S. Samant, J.**

1. This appeal has been preferred under Section 19 of the Family Courts Act, 1984 against the impugned judgment dated 10.9.2013 passed by the Judge, Family Court Camp Court, Katghora, Korba, District Korba, Chhattisgarh in M.J.C. No. 2 of 2012, by which an application filed by the appellant under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act") was rejected.
2. The facts of the case are that the appellant was married to son of the respondent in the year 1999. Out of this wedlock, two sons were born and

on the date of filing of the application under Section 19 of the Act, they were aged about 14 and 16 years, respectively. Husband of the appellant, namely, Mewalal expired on 8.12.2009. The appellant was driven out of the matrimonial home during the lifetime of her husband Mewalal. On an application filed by her for maintenance, by order of the Court, deceased Mewalal used to pay Rs.600/- per month as maintenance. After the death of her husband, respondent/ father-in-law neglected in maintenance of the appellant. Respondent is the owner of about 10 acres of agricultural land and apart from that he is engaged in business of vegetables and raising cattle and he earns Rs.1,00,000/- per annum. The land in possession of the respondent is ancestral. The appellant filed an application in the court of Tehsil Podiuproda, Korba for partition of land which was rejected by order dated 30.9.2011. Therefore, by filing the application under Section 19 of the Act, the appellant prayed for maintenance of Rs.5,000/- per month from the respondent.

3. The respondent admitted that the appellant is the wife of his deceased son and he has two grandchildren aged 14 and 16 years, respectively. It was also admitted that his deceased son Mewalal was ordered by the court to pay maintenance of Rs.600/- to the appellant. According to the respondent, the appellant deserted her husband and children and was residing in her paternal home on her own will. The respondent has taken up the responsibility of the siblings of his deceased son. He denied that he is having ancestral property and also other sources of income. He also stated that he is an old person having no source of income and as such the appellant is not entitled to seek maintenance. Hence, the respondent prayed for rejection of the application for maintenance filed by the appellant.

4. The court below after hearing both the parties passed the impugned judgment in which it was held that the appellant is not entitled for maintenance and her application was rejected on the grounds that the appellant herself is employed as Peon in Primary School, Bapupara and getting monthly salary and the respondent is an old aged person.

5. The grounds in this appeal are that the trial court has passed an erroneous judgment rejecting the claim of the appellant and the finding that the respondent is 70 years old and dependent on his sons is erroneous because he is the holder of the joint family property. The appellant being in a job on the basis of ad-hoc appointment, cannot be the ground for dis-entitling her to obtain maintenance under Section 19 of the Hindu Adoptions & Maintenance Act, 1956 (for short 'the Act') which clearly provides that daughter-in-law is entitled for maintenance. Hence, it is prayed that the impugned judgment be set aside and the order of maintenance may be passed.

6. Learned counsel for the appellant submits that the respondent is a man of means. The respondent admitted in his statement that he is the owner of six acres of agricultural land which is being cultivated by his younger son and grandsons. As per provisions under Section 19 of the Act, the appellant is entitled to a share in the property as her deceased- husband was a coparcener in the joint property. The service of the appellant is on daily wage basis which cannot be considered as a cause of dis-entitlement. Reliance has been placed on the judgment of co-ordinate Bench of this court in FAM No.72 of 2016 vide order dated 15.9.2016. In the said judgment,

citing the provisions under Section 19 of the Act regarding maintenance of widowed daughter-in-law, it was held that a Hindu wife is entitled to claim her maintenance after death of her husband from her father-in-law. The facts in the said case had been that the respondent in that case did not get any share from the property of her father-in-law, hence, she had entitlement to claim maintenance from the coparcenary property available in the hands of the appellant. It is submitted that the maintenance be ordered in favour of the appellant.

7. Learned counsel for the respondent has opposed the grounds raised in this appeal and the arguments submitted on behalf of the appellant. It was submitted that the respondent is an old man of more than 70 years of age. He has two living sons in their family and also two grandsons from his deceased son, who are his responsibility. All of them are dependent upon the agricultural lands held jointly, which is only of six acres in area and not sufficient to meet the needs of all the dependents. Section 19 of the Act does not compel the father-in-law to maintain his daughter-in-law especially when he has no means to do so. For these reasons, the appeal be dismissed.

8. First of all the pleadings of the parties need consideration as the petition for maintenance was brought under Section 19 of the Hindu Adoptions and maintenance Act, 1956. It was nowhere pleaded by the appellant that she is a Hindu and is governed by Hindu Law. In reply of the respondent also nothing is mentioned in this respect. The cause-title shows that the appellant and the respondent are by caste Gond which is a

Scheduled Tribe in the State of Chhattisgarh. Hence, it was necessary in this case to plead that the parties are Hindus and governed by Hindu Law which is clearly missing. Further, it has been pleaded that the marriage of the appellant was performed in accordance with the rituals and customs prevalent in their caste shows the omission in pleading that the marriage was solemnized in accordance with the Hindu Customary Rights. No effort was made by any of the parties to clarify and remove this confusion during the course of the arguments. Section 2(2) of Hindu Adoptions and Maintenance Act provides:

'Notwithstanding anything contained in sub-section(1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.'

9. In these state of things, the omission of the pleadings by the parties regarding applicability of Hindu Law in the case has an impact on the decision under Section 19 of the Act brought by the appellant. Although it is not specifically pleaded that parties to the case are governed by which of customary law of Scheduled Tribes, discloser made in the cause-title as to their caste being Gond is sufficient to raise this presumption that parties belong to Scheduled Tribes. The customary law of Scheduled Tribe has been preserved under Section 2(2) of the Act. Hence, the members of Scheduled Tribes are governed in the matter of marriage and succession in accordance with their customary law. There are some instances where on the basis of specific pleadings and by bringing of proof, it has been held that the particular tribes are sufficiently Hinduised and on that basis the enacted

Hindu law was made applicable on them also.

10. **Kailash Singh vs. Mewalal Singh Gond and Others** reported in **2002 (2) MPLJ 163**, High Court in **Smt. Butaki Bai and Others vs. Sukhbathi and Others** reported in **AIR 2014 Chhattisgarh 110**, **Budhu Majhi and Another vs. Dukhan Majhi and Others** reported in **AIR 1956 Patna 123**, **Chunku Manjhi and Others vs. Bhabani Majhan** reported in **AIR (33) 1946 Patna 218** are being referred to wherein it has been clearly held that when a member of Scheduled Tribe claims to be governed by Hindu Law he has to specifically plead and prove it.

11. The requirement of specific pleading and proof in this case was essential because the law under which relief has been claimed by the appellant is a personal law applicable to Hindus only. By the provision under Section 22 of the Act, the application on this law to Scheduled Tribes under the Constitution of India has been specifically exempted. To bring the case under the explanation as per the principle of law laid down in this respect, pleading and proof was necessary in this case. The Hindu Adoptions and maintenance Act, 1956 cannot be treated as general law applicable to all and looking to the pleadings of the parties in this case it cannot be assumed that the parties are governed by this Act.

12. Hence, for the aforesaid reason alone, the application of the appellant under Section 19 of the Act was not maintainable. Although the trial court has decided the application on merits, but the finding in this appeal is very

clear that this application was not maintainable. For the reasons as mentioned hereinabove and after due consideration, it is found that this appeal has no merit and it is dismissed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(R.C.S. Samant)

Judge