

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

1. RSA No.4052 of 2017 (O&M)
Date of decision : 06.09.2017

Hari Chand and another

...Appellants

Versus

Sheela Rani and another

...Respondents

2. RSA No.4054 of 2017 (O&M)
Date of decision : 06.09.2017

Hari Chand and another

...Appellants

Versus

Sheela Rani and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K. Ganga, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

By this common judgment, I shall be disposing of RSA bearing Nos.4052 and 4054 of 2017.

Defendants are in Regular Second Appeals against the concurrent findings of fact arrived at by the Courts below. Plaintiff No.1 is daughter-in-law, whereas plaintiff No.2 is grand-son of the defendants.

The plaintiffs had filed a suit under Section 19 of the Hindu

Adoption and Maintenance Act, 1956 praying for providing maintenance allowance from the defendants.

It was the case of the plaintiffs that husband of plaintiff No.1 and father of plaintiff No.2 had died and plaintiff No.1 is helpless and a household lady. The pleadings in Para 5 of the plaint read as under:

“5. That the plaintiffs are helpless and they are residing at the residence of the plaintiff No.1. The plaintiff No.2 is a school going boy and sufficient amount is required not only for educational expenses but usual expenses are required to meet out day to day affairs. The plaintiff No.1 is a household lady having no independent income of her own, whereas the defendants are very rich persons having approximate 30 acres of agricultural land in village Kotli, Distt. Sirsa in Village ____ Distt. Fatehabad.”

The defendants had contested the suit. It was pleaded that the defendants are not legally bound to provide maintenance to the plaintiffs. It was pleaded that property at the hands of defendants is self-acquired property and, therefore, they are not liable to pay any maintenance. It was further disclosed that Subhash Chand (since deceased), had transferred his land measuring 8 kanals 8 marlas in favour of plaintiff No.2.

Learned trial court after appreciating the evidence available on the file, decreed the suit to the extent that each plaintiff shall be entitled to the maintenance at the rate of ₹2500/- per month.

Two appeals were preferred. One by the plaintiffs and other by the defendants. Learned First Appellate Court after re-appreciating the evidence available on the file held that plaintiff No.1 is entitled to the maintenance at the rate of ₹8,000/- per month whereas no order was passed

with regard to the maintenance payable to plaintiff No.2 as he was found to very near to the age of the majority. The order passed by the trial court in favour of plaintiff No.2 was upheld.

Learned counsel for the appellants has submitted that necessary pleadings as required under Section 19 of the Hindu Adoption and Maintenance Act are lacking and, therefore, suit could not be decreed. Section 19 of the Hindu Adoption and Maintenance Act is 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 re-marriage of the daughter-in-law”

Learned counsel for the appellants has further submitted that in the judgment reported as 2016(3) PLR 700, this Court has held that in the

absence of proper pleadings, the suit for grant of maintenance cannot be decreed.

I have considered the submission of learned counsel for the appellants. Para No.5 of the plaint has already been reproduced above. It is clear from the reading of para No.5 that the plaintiffs are helpless. It is further pleaded that plaintiff No.1 is a household lady having no independent income of her own.

In view of this pleading, it cannot be said that the necessary pleadings as required under Section 19 of the Hindu Adoption and Maintenance Act were not put forth. Section 19 of the Hindu Adoption and Maintenance Act does not provide for any specific pleadings. The only thing required under the Act is that the plaintiffs must plead 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 from the estate of her husband or her father or her mother. In the present case, the parties went to trial with open eyes. Defendants did not bring on record any evidence to show that plaintiff No.1 had any property at her disposal.

In view of the aforesaid fact, in my considered opinion, the pleadings of the plaintiffs in para No.5 is sufficiently in compliance of Section 19 of the Hindu Adoption and Maintenance Act. It is a welfare legislation which provide for maintenance to destitute ladies. It is not in dispute that plaintiff No.1 is a widowed daughter-in-law, whereas plaintiff No.2 is a minor grandson. Both the plaintiffs had lost Subhash Chand, husband of plaintiff No.1 and father of plaintiff No.2.

Learned Courts below have found that the defendants are rich

and own 28 acres of land. In State of Haryana, the land is fertile and the rental value of the land is not less than ₹35,000/- per year per acre. In these circumstances, there is no force in the submission of the learned counsel for the appellants.

Learned counsel for the appellants has further submitted that defendant No.2 is mother-in-law. Mother-in-law has no responsibility under Section 19 of the Hindu Adoption and Maintenance Act. There is some force in the submissions of learned counsel for the appellants. The reading of Section 19 shows that father-in-law has been made liable to maintain the daughter-in-law, however, this is only a small irregularity. It is not in dispute that both the defendants contested the suit. Since the liability is of father-in-law as per Section 19 of the Hindu Adoption and Maintenance Act, therefore, the decree passed by the courts below is modified and it shall be read only against defendant No.1.

Since I am modifying the decree without issuance of notice to the plaintiffs, therefore, they shall be at liberty to move application for recall of the order, if they so desire.

Hence, both the appeals are dismissed.

06.09.2017

Pawan/sheetal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**