

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision (F) No. 405 of 2016
Date of Decision: 24.9.2018**

Darshan Singh

.....Petitioner

Versus

Jaswinder Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

None for the respondent.

ANITA CHAUDHRY, J

The petitioner has assailed the order dated 12.10.2016 passed on the application filed by the respondent under Section 125 Cr.P.C. The Family Court, Barnala allowed maintenance of Rs. 2,000/- per month from the date of filing of application.

Counsel for the petitioner contends that the petitioner is over 70 years of age and he is not earning and the entire property has been transferred in the name of the respondent. The counsel further contends that petitioner had given a power of attorney to his wife who sold the property to the son who in turn transferred the same to the respondent and the house and the three shops are in her possession and the wife is getting rent and the petitioner is living separately and this fact is admitted by her as the trial Court had asked the parties to make a statement. Counsel also

contends that the Family Court had awarded maintenance without considering that the petitioner is old in age and unable to do any work and is barely able to make both ends meet and is living with his son. The counsel further urges that the respondent is also living with another son and the petitioner had filed a suit as the property had been illegally transferred in favour of Jaswinder Kaur and there is a reference to the suit in the order but the Family Court has ignored the averments.

Notice of motion had been issued. No one had put in appearance on behalf of the respondent.

The record was summoned.

On going through the record, I find that the Court had taken the statements of Jaswinder Kaur and Darshan Singh which are available on page 35 of the record. Darshan Singh had made the statement that he was not the owner of any landed property or any vehicle and he was ready to transfer the same in case it was proved that he owned any land.

The statement of Jaswinder Kaur is as follows:-

“Stated that I am owner in possession of house comprising of four rooms, kitchen, bathroom and three shops towards the street and one room on the first floor constructed over land measuring 8 Biswas situated in the area of Patti Road, Barnala. I have given one room on rent at the rate of Rs. 500/- per month. One shop is used by me as passage of my house while the other shop of lying vacant. The respondent has sold the land measuring 12 Biswas.”

The wife had claimed maintenance from the husband. The petitioner is over 70 years of age. The record reveals that a sale deed had been executed in 2008 in favour of Lakhwinder Singh by Jaswinder Kaur who was the attorney of the petitioner. All the landed property earlier was

in the name of the husband. A civil suit challenging the sale deed is pending between the parties. The wife was required to lead evidence to show that the husband had income. She was unable to lead any evidence to show that the husband had income from any source. On the other hand, she admits that she is in possession of a house and there are shops which have been let out. She did not lead any evidence to show that she was getting only Rs. 500/- per month as rent. She could have examined the tenant who could have shed more light on that. It appears that the wife has kept back the best evidence available to her. She has failed to contest this petition and has not come forward despite the fact that service was effected. The children of the parties are married and are in the age group of 25-32 years. Both the petitioner and the respondent are living with their sons but separately. It is the respondent who is living in the property which was earlier owned by the petitioner. The petitioner has claimed that the actual rent accruing from the shops is over Rs. 15,000/- per month. Therefore, in the light of the circumstances above, no maintenance could have been awarded.

The order dated 12.10.2016 passed by the Court below is set aside. The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

September 24, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No