

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.174 of 2016

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Anandi Singh Son of Late Radha Singh, Resident of Village- Hamatpur, P.S.- Garkha, District- Siwan, at present Mohalla- Kataharibagh, P.S.- Chapra Town, District- Saran.

... .. Petitioner/s

Versus

Most. Nitu Kunwar Wife of Late Rakesh Kumar Singh, D/o Baidyanath Singh, Resident of Village- Hamatpur, P.S.- Garkha, District- Saran at present Mohalla- Kataharibagh, P.S.- Chapra Town, District- Saran. Now live at Village- Bishunpur Pratap, P.S.- Amnour, District- Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Kumar Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-07-2019

The present writ petition has been filed for quashing the order dated 22.06.2015 passed in Maintenance Case No. 162 of 2010 by the learned Principal Judge, Family Court, Saran at Chapra whereby and whereunder the petitioner has been directed to pay a sum of Rs. 3000/- per month to the respondent herein.

2. The brief facts of the case are that the respondent was married with the son of the petitioner herein. On 8.7.2010, the husband of the respondent i.e. the son of the petitioner herein died, whereafter the father-in-law of the respondent i.e. the petitioner herein assaulted the respondent and kicked her out from the matrimonial house, whereupon the respondent had been compelled to go to her parent's house along with her infant son. The respondent had then filed a maintenance Case bearing Maintenance Case No. 162 of 2010, stating therein that since her father-in-law was not maintaining her and her child, a sum of Rs. 10,000/- per month be granted as maintenance to her, to



be paid by her father-in-law, who was having sufficient means and is drawing a pension of Rs. 12,000/- per month as also is having rental income and income from agriculture. Subsequently, the respondent is stated to have filed a petition on 30.08.2013 before the learned trial court for grant of Rs. 3000/- per month as an ad-interim maintenance. The petitioner is stated to have filed a reply to the maintenance case, denying the allegations made by the Respondent and had stated therein that he is an old retired person and his financial condition is poor. The petitioner had further averred in his reply that though he had offered to maintain the son of the respondent herein but she did not allow him to do so and in fact, she has also filed a dowry case against the petitioner.

3. The learned trial court by the impugned judgment dated 22.6.2015 has directed the petitioner herein to pay a sum of Rs. 3000/- per month to the respondent herein by way of ad-interim maintenance.

4. The learned counsel for the petitioner has submitted that Section 19(2) of the Hindu Adoption and Maintenance Act, 1956 clearly provides that a father-in-law would not be liable to maintain her daughter-in-law if the father-in-law has no means to do so from any co- parcener property in his possession out of which the daughter-in-law has not obtained any share. Relying on the said provision contained in Section 19(2) of the Hindu Adoption and Maintenance Act, 1956, the learned counsel for the petitioner has submitted that since there is no co- parcener property, the respondent herein is not entitled to any maintenance.

5. I have heard the learned counsel for the parties and have perused the impugned order dated 22.6.2015 passed by the



learned Principal Judge, Family Court, Saran at Chapra wherein the learned court has observed that admittedly the petitioner herein is *karta* of the joint hindu family and also cultivates land and is also having a residential house at Chapra, however, no proof has been produced to show that partition has taken place during the life time of the husband of the respondent herein. It has been further observed that there is 20 bighas of cultivated land in the family besides a pucca house and the petitioner herein is still *Karta* of the hindu joint family. Lastly, the trial court has considered the fact that the petitioner herein has not filed any proof to show that the respondent herein is having any personal income.

6. This Court is of the view that the learned trial court has furnished cogent reason for *prima facie* coming to a finding that the maintenance case filed by the respondent herein, is not hit by the provision of Section 19(2) of the Hindu Adoption and Maintenance Act, 1956 and has thus, rightly allowed the petition of the respondent herein for grant of ad-interim maintenance and has rightly directed to pay a sum of Rs. 3000/- per month to the respondent herein, to be paid by the petitioner herein who is her father-in-law. This Court is persuaded to refer to a judgment reported in AIR 1997 Orissa 73 [**Purusottam Mahakund Vs. Smt. Annapurna Mahakund**] where the Hon'ble Orissa High Court has held that the right to claim any ad-interim maintenance in a suit is a substantive right of the parties and since no forum is prescribed to enforce the said right, the civil court in exercise of its inherent power can grant ad-interim maintenance.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not



find any merit in the present writ petition, accordingly, the same is dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.10.2019
Transmission Date	N/A

