

CR-333-2018 (O&M)

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

**CR-333-2018 (O&M).
Decided on: May 6, 2019.**

Rohtash Singh Verma

.. Petitioner

VERSUS

Simran @ Savita and others

.. Respondents

*** * ***

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

*** * ***

**PRESENT Mr.Zorawar Singh, Advocate,
for the petitioner.**

**Mr. Rohit Rana, Advocate, for
Mr. Kunal Dawar, Advocate,
for respondent Nos.1 to 3.**

AMIT RAWAL, J. (ORAL)

The short point involved in the present case is whether the widowed daughter-in-law and grand children are entitled to claim maintenance from father-in-law under Section 18 of the Hindu Adoption and Maintenance Act, 1956, from the property being ancestral.

The aforementioned point has already been answered by Hon'ble the Supreme Court of India in **Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and others, 2008 (2) RCR (CrL) 699**, paras 21 to 24 of which read as under: -

“21. Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject matter of attachment nor during the life time of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.

22. Wholly un-contentious issues have been raised before us on behalf of Sonalben (wife). It is well settled that apparent state of affairs of state shall be taken a real state of affairs. It is not for an owner of the property to establish that it is his self-acquired property and the onus would be on the one, who pleads contra. Sonalben might be entitled to maintenance from her husband. An order of maintenance might have been passed but in view of the settled legal position, the decree, if any, must be executed against her husband and only his properties could be attached therefor but not of her mother-in-law.

23. Sections 4 and 28 of the Hindu Adoptions and

Maintenance Act read as under :- "4. Overriding effect of Act Save as otherwise expressly provided in this Act,- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act. 28. Effect of transfer of property on right to maintenance Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right."

24. Section 4 provides for a non obstante clause. In terms of the said provision itself any obligation on the part of in-laws in terms of any text, rule or interpretation of Hindu Law or any custom or usage as part of law before the commencement of the Act, are no longer valid. In view of the non obstante clause contained in Section 4, the provisions of the Act alone are applicable. Sections 18 and 19 prescribe the statutory liabilities in regard to maintenance of wife by her husband and only on his death upon the father-in-law, Mother-in-law, thus, cannot be fastened with any legal liability to maintain her daughter-in-law from her own property or otherwise."

CR-333-2018 (O&M)

At this stage, counsel for the respondents submits that there is specific allegation that the property was purchased by the father-in-law out of the funds of the ancestral property.

I am afraid that the above mentioned plea cannot be adjudicated in a petition under the Hindu Adoption and Maintenance Act. The remedy lies somewhere else. In the circumstances, the impugned order dated 9.10.2017 (Annexure P1) is not sustainable as the same suffers from infirmities and thus, the same is set aside.

The revision petition stands allowed accordingly.

May 6, 2019.
raj arora

(AMIT RAWAL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No