

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

FAO No.4898 of 2016 (O&M)
Decided on : 09.07.2019

Jai Singh

..... Appellant

Versus

Suman and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Manoj Sharma, Advocate
for the appellant.

Mr. Shailender Singh, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the appellant against the judgment and order dated 07.05.2014 vide which the petition filed under Sections 19, 20, 21, 22 and 23 of the Hindu Adoption and Maintenance Act, 1956 (in short 'the Act') was partly allowed and he was directed to pay maintenance of Rs.2,000/- per month to respondent No.2 – Tinu @ Sonia.

2. The facts pleaded by the respondents in the petition filed before the Family Court, Sonipat are that marriage of respondent No.1 -Suman was solemnised with Dharamvir (since deceased) son of the appellant on 28.06.2002 as per Hindu rites and ceremonies. Out of the said wedlock, one daughter i.e. respondent No.2 Tinu @ Sonia was born on 21.07.2004. After the death of the husband of respondent No.1, she was turned out of her matrimonial home along with her minor daughter i.e. respondent No.2 and

since then she had been compelled to reside at her parental home in village Dikadla. It was further pleaded that as there was no moveable or immoveable property in their name, hence, it was difficult for the respondents to maintain themselves. It was also submitted that the late husband of respondent No.1 and the father of respondent No.2 was a member of Joint Hindu Family and co-owner in land measuring 4 acres situated in District Sonipat, which was recorded in the name of appellant herein and thus, both the respondents i.e. mother and daughter had a right in the same, being coparceners. It was further submitted that the respondents, herein, were liable to be, thus, maintained out of the income of the said land. It was also alleged that the widow pension by the Government of Haryana, which was disbursed in her favour, was never given by the appellant to her and was illegally withheld by him.

3. The appellant refuted the averments made in the aforementioned petition by way of his written statement and denied the same. He, in fact, pleaded that the ancestral property, which was stated to be in his hands, was partitioned way back in the year 2000 and at that time, his deceased son Dharamvir, husband of respondent No.1 and father of respondent No.2 respectively had taken cash amounting to Rs.15 lakhs in lieu of his share in the ancestral property from him and his other two sons. It was submitted that cash amount so received had then been invested by him for purchasing a private bus, which his deceased son Dharamvir would ply. It was also pleaded that the deceased Dharamvir being HIV positive was got treated by him and his other two sons by spending a huge amount of money on his treatment. Further, on the death of his son Dharamvir, the

appellant repaid a debt of Rs.22 lakhs along with interest to the creditors, which was standing against the name of Dharamvir. The appellant also submitted that besides all this, he incurred expenditure on the education of respondent No.1.

4. From the pleadings of the parties, following issues were framed:

1. Whether the petitioners are entitled for maintenance of Rs.20,000/- per month as alleged? OPP
2. Relief.

5. Thereafter both the parties adduced evidence in support of their case. Respondent No.1 and her father namely Partap appeared in the witness box as PW-1 and PW-2 respectively. On the other hand, the appellant deposed as RW-1 and reiterated his stand as taken in the written statement. In his cross-examination, the appellant admitted that he owned 3½ acres of agricultural land and went on to depose that had the respondent No.1-Suman not remarried, she would have got her share in the agricultural land. Rattan Singh (RW-2) a relative of the appellant corroborated the deposition made by the appellant.

6. After analysing the evidence on record, the trial Court held only respondent No.2 – Tinu @ Sonia entitled to get maintenance and rejected the right of respondent No.1 for maintenance from the appellant as she had remarried. The trial Court directed the appellant to pay Rs.2,000/- per month to respondent No.2 as maintenance.

7. We have heard learned counsel for the parties and perused the

evidence and other material available on record.

8. It may be noticed that the learned counsel for the parties have reiterated their submissions and stuck to their respective stand taken before the trial Court.

9. While relying upon Section 20 of the Act, learned counsel for the appellant submitted that in view of the provisions contained therein, respondent No.2 would not be entitled to claim maintenance from the appellant and a grave error had thus, been committed by the Court below in awarding the said maintenance.

10. On the other hand, learned counsel for the respondents vehemently argued that in view of the provisions contained in Section 21 of the Act, respondent No.2 cannot be denied maintenance, which the appellant being the paternal grandfather of respondent No.2 has rightly been directed to pay.

11. It would be relevant to reproduce Section 21 of Hindu Adoption and Maintenance Act, 1956, which is as follows:

21. Dependants defined.—For the purposes of this Chapter “dependants” mean the following relatives of the deceased:—

- i) his or her father;*
- ii) his or her mother;*
- iii) his widow, so long as she does not re-marry;*
- iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great grand-*

- son, from the estate of his father or mother or father's father or father's mother;*
- v) ***his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;***
 - vi) *his widowed daughter: provided and to the extent that she is unable to obtain maintenance—*
 - a) *from the estate of her husband, or*
 - b) *from her son or daughter if any, or his or her estate, or*
 - c) *from her father-in-law or his father or the estate of either of them;*
 - vii) *any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;*
 - viii) *his or her minor illegitimate son, so long as he remains a minor;*
 - ix) *his or her illegitimate daughter, so long as she remains unmarried.*

A bare reading of the Sub Section (v) of Section 21 of the Act leaves no manner of doubt that the appellant being the parental grandfather

of respondent No.2 would be liable to pay maintenance to his deceased son's daughter. It is an admitted case of the appellant himself that he owns 3½ acres of agricultural land in district Sonipat. The sum of Rs.2,000/- awarded as maintenance to respondent No.2 – Tinu @ Sonia is an amount, which cannot be said to be beyond the means of the appellant.

12. As a sequel to the above discussion, we do not find any infirmity or perversity in the impugned order passed by learned Family Court as the same is a well reasoned one. Accordingly, the present appeal is dismissed.

13. An application bearing CM No.16739-CII-2016 has been filed under Section 5 of Limitation Act, 1963 for condonation of delay of 803 days in filing the appeal. Since the appeal has been dismissed on merit, no further orders are required to be passed in the said application and the same is disposed of as such.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 09, 2019
sonia

Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No