

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.

FAO-7203-2017 (O&M)
Date of Decision:31.05.2019

Satpal

..... Appellant

Vs.

Suman and others

..... Respondents

2.

FAO-1419-2018 (O&M)

Suman and others

..... Appellants

Vs.

Satpal

..... Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present: - Mr.Rishab Lohan, Advocate,
for the appellant (in FAO-7203-2017)
for the respondent (in FAO-1419-2018)

Mr.K.S. Malik-I, Advocate,
for the respondent (in FAO-7203-2017)
for the appellant (in FAO-1419-2018)

RAKESH KUMAR JAIN, J.

This order shall dispose of two appeals bearing **FAO-7203-2017** titled as “**Satpal Vs. Suman and others**” and **FAO-1419-2018** titled as “**Suman and others Vs. Satpal**” as both the appeals have arisen from the judgment and decree dated 10.8.2017 passed by the Family Court at Rohtak by which ₹10,000/- per month has been awarded to Suman and her two minor children towards maintenance from the date of filing of the petition. However, for the sake of convenience, the facts are being extracted from FAO-7203-2017.

In brief, the respondents Suman and her two children, filed a petition under Sections 19, 21 and 22 of the Hindu Adoptions and Maintenance Act, 1956 [for short 'the Act'] before the Family Court at Rohtak, for seeking maintenance from the appellant-Satpal (father-in-law of Suman), after the death of her husband Nitin. Marriage of Suman with Nitin, son of Satpal, was solemnized on 7.5.2006 at Rohtak as per Hindu rites and ceremonies. They were blessed with two children, namely, Vansh (Son) and Sayogita (daughter). Nitin (husband of Suman) died on 26.11.2010. It is alleged that after 13 days of his death, the appellant threw the respondents out of his house and since then they are staying at the parental home of Suman (respondent No.1). The respondents have thus filed a petition before the Family Court at Rohtak for seeking maintenance from the appellant alleging that he is working as a driver in the Railway Department, drawing salary of ₹60,000/- per month and having other moveable and immoveable property in District Sonapat whereas the respondents/applicants has no source of income.

In the reply filed by the appellant to the petition filed by the respondents, relationship between the parties was not denied rather it is alleged that after the death of his son, respondent No.1, in consultation with her parents, started living separately at Jind. He had though offered to pay for food, education and rent but the same was declined by respondent No.1 alleging that she has no connection with the family of the appellant any more. It is alleged that she also executed in writing in this regard on 22.12.2010 and in the month of February 2011, she made a false complaint against him and his family members in the Women Cell at Rohtak where the matter was compromised and it was decided that if she would settle the matter at Jind then he would pay ₹2500/- per month but it is alleged that the

said offer was declined by respondent No.1. It is also alleged by him that though he has been working as a driver in the Railway Department but his salary is ₹25,000/- per month and has a large family to support. He did not have any moveable and immoveable property as alleged.

On the pleadings of the parties, the trial Court framed as many as three issues.

The trial Court, while deciding issue no.1 relying upon a decision of this Court rendered in the case of **“Balbir Kaur Vs. Harinder Kaur”** 2003(1) RCR (Civil) 624, held that the widowed daughter-in-law has a right of maintenance even from the self acquired property of the father-in-law. The Court also found that the appellant would retire in the year 2017 and expected to receive retirement benefits of more than ₹40 lakhs and the trial Court, keeping in view a fact, that respondent No.1 is a house wife, having no source of income and is looking after two minor children, awarded maintenance of ₹10,000/- per month to them from the date of filing of the maintenance petition.

Aggrieved against the judgment and decree passed by the Family Court at Rohtak dated 10.8.2017, the appellant-Satpal has filed the present appeal for setting aside the impugned judgment and decree whereas Suman and her children have filed their appeal for the purpose of enhancement of the amount of maintenance.

Learned counsel for the appellant has submitted that the learned Court below has committed an error in awarding the maintenance to the widowed daughter-in-law (respondent No.1) by invoking the provisions of Section 19(1) of the Act as there is an exception in Section 19(2) of the Act and has further erred in relying upon the decision of this Court rendered in the case of **Balbir Kaur (Supra)**. It is further submitted that the father-in-

law is liable to maintain a widowed daughter-in-law in terms of Section 19 of the Act only from the coparcenary property in his possession out of which the daughter-in-law has not obtained any share whereas, in the present case the order of maintenance has been passed from the self acquired property of the appellant-Satpal. In this regard, he has relied upon a decision of the Supreme Court rendered in the case of **“Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and others”** 2008 AIR (SC) 2675, a decision of this Court rendered in the case of **“Sunita and another Vs. Pyare Lal and others”** 2010 (24) RCR (Civil) 108, a decision of the Division Bench of the Patna High Court rendered in the case of **“Ram Prasad Sahni Vs. Most. Punita Devi”** 2017(4) B.L. Jud.3, and a decision of the Division Bench of this Court rendered in the case of **“Jal Kaur Vs. Pala Singh”** 1961 AIR (Punjab) 391.

We have heard learned counsel for the parties on this issue and perused the record.

In order to appreciate the respective contentions of the counsel for the parties, it would be relevant to refer to Section 19 of the Act, which is reproduced 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 remarriage of the daughter-in-law.”

It is an admitted fact that the Court below has ordered for the payment of maintenance to Suman (widowed daughter-in-law) in terms of Section 19(1) of the Act from the salary of the appellant. In this regard, the relevant observations of the trial Court, recorded in para No.12 of the impugned order, needs to be highlighted, which is reproduced as under: -

“In the instant case there is no proof of any source of income or any proof of any estate from which the petitioners can maintain themselves, therefore, it can be safely inferred that the conditions under Section 19 stands fulfilled. Though there is also no evidence of any immovable property fo the respondent, however, this Court is also of the view that the term ‘property’ used in Section 19 of the Hindu Adoption & Maintenance Act, 1956 denotes moveable property as well. The salary drawn by the respondent is his moveable property. Therefore, he is bound to maintain the petitioners from that property.”

While interpreting Section 19 of the Act, the Supreme Court in the case of ***Vimalben Ajit Bhai Patel (Supra)***, this Court in the case of ***Sunita and another (Supra)*** and the Patna High Court in the case of ***Ram Prasad Sahni (Supra)*** unequivocally held that the obligation of the father-in-law to maintain the widowed daughter-in-law would be from the income of the coparcenary property in which the husband is a co-sharer and not from the property owned by the father-in-law from his personal capacity but in the judgment relied upon by the Court below, rendered by the Single Bench of this Court in the case of ***Balbair Kaur (Supra)***, while deciding a specific issue as to whether a widowed daughter-in-law is entitled to the maintenance amount from her father-in-law from his salary and from the self acquired property, it has been held that *“though under the Act, the right to claim maintenance by a widowed daughter-in-law against the father-in-law is limited to the extent of coparcenary property in the hands of father-in-law, out of which widowed daughter-in-law has not taken any share, but under the Old Hindu law, prevailing before the enactment of the Act, this right of maintenance of widowed daughter-in-law against the self acquired property of father-in-law was available. Hon’ble High court has further held that this right is still available to the widowed daughter-in-law of pre-deceased son against the self acquired property of her father-in-law, as this right shall not ceased to be in force because the same is not inconsistent with any provision contained in the said Act. Thus, the widowed daughter-in-law of a pre-deceased son is entitled to claim right of maintenance against the self acquired property of her father-in-law, whether it is in his hand or in the hand of his heir or donee.”*

With due respect, the view expressed by the learned Single Judge of this Court in the case of **Balbir Kaur (Supra)** will not apply in view of Section 4 of the Act, which is reproduced 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 in so far as it is inconsistent with any of the provisions contained in this Act.”*

In the case of **Vimalben Ajitbhai Patel (Supra)**, the Supreme Court has held that *“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 objection 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 has 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”*. While referring to Section 4 of the Act, the Supreme Court has further held that *“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”.

The Court below has thus wrongly relied upon a decision of this Court rendered in the case of **Balbir Kaur (Supra)** for the purpose of invoking the provisions of Section 19 of the Act towards maintenance to the widowed daughter-in-law from the salary of the father-in-law because award of maintenance to the widowed daughter-in-law from the salary of the father-in-law and from the self acquired property of the father-in-law in which the husband has no share would be inconsistent with the provisions of Section 19(2) of the Act in particular.

Thus in our considered opinion, the Court below has committed a patent error in law in relying upon a decision of the Single Judge of this Court rendered in the case of **Balbir Kaur (Supra)** in awarding maintenance to Suman (daughter-in-law).

Insofar as awarding maintenance under Sections 21 and 22 of the Act is concerned, this Court while delivering a judgment in the case of **“Nachhattar Singh Vs. Satinder Kaur and others” 2007(4) RCR (Civil) 826** has held that the father-in-law is liable to maintain grandchildren if they are unable to maintain themselves and the income of their mother/father is inadequate for their maintenance.

Thus in view thereof, we are of the considered opinion that both the minor children, who are the grandchildren of the appellant-Satpal, have rightly been awarded the amount of maintenance.

Since, the Court below had awarded ₹10,000/- in all as maintenance to all the three respondents, i.e. mother and two minor children and we have held that the maintenance to the mother by the father-in-law from his salary is not liable to be paid, the amount of maintenance awarded by the Court below would be reduced by 1/3rd but keeping in view the fact that the respondents herein have also filed their own appeal bearing FAO-1419-2018 for the purpose of enhancement of compensation, we, while allowing FAO-7203-2017 partly only in regard to the award of maintenance having been granted to the daughter-in-law from the salary of the father in law, which is hereby set aside, allow the appeal bearing FAO-1419-2018 partly in favour of appellant Nos.2 & 3 and enhance the amount of maintenance, which has been reduced to ₹7000/- after deducting 1/3rd in FAO-7203-2017, to ₹10,000/- again for the purpose of awarding the same to both the minor children.

Thus with these observations, both the appeals are hereby disposed of.

A photocopy of this order be placed on the file of connected case.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

31.05.2019
Vivek

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