

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 8 of 2019**

Parwati Wd/o Late Ashok Singh Aged About 30 Years D/o Chaitram
Kariyare, Caste Suryavanshi, R/o House No. 924, Ratre Muhalla 01
Village Gajra Basti, Tahsil Katghora, District Korba, Presently Residing
At Village Dhara Shiv, Police Station Pamgarh, Tahsil Janjgir, District
Janjgir Champa Chhattisgarh **----Appellant**

Versus

1. Danpatra Singh S/o Late Panchram Aged About 70 Years Caste
Suryavanshi, R/o House No. 924, Ratre Muhalla, 01 Village Gajra
Basti, Tahsil Katghora, District Korba Chhattisgarh
2. Chhat Bai W/o Danpatra Singh Aged About 65 Years Caste
Suryavanshi, R/o House No. 924, Ratre Muhalla, 01 Village Gajra
Basti, Tahsil Katghora, District Korba Chhattisgarh **--- Respondents**

For Appellant	:	Mr. Ganesh Ram Berman, Advocate
For Respondent	:	Mr. Avinash Chand Sahu, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board by Manindra Mohan Shrivastava, J.****13/07/2020**

Heard.

1. This appeal is directed against order dated 14.08.2019 passed by the Family Court Janjgir Champa, by which, appellant's application for grant of maintenance under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 has been rejected.
2. The appellant was married to one Ashok Singh, who died on 22.02.2018. Immediately after death, she left the matrimonial house and started residing with her father and thereafter moved an application for grant of maintenance of Rs.50,000/- against father-in-law and mother-in-law on 17.07.2018, on pleadings *inter alia* that after the death of her husband, she has become destitute and unable to maintain herself, she has no source of income, she has no property from which, she could earn her livelihood. It was further pleaded that father-in-law and mother-in-law are possessed of coparcenary property, out of which, they are earning Rs.30,00,000/- per year.

It was also pleaded that sons of the father-in-law namely Santosh Singh and Rakesh Singh are also earning. Further, pleading was that as she was not earning herself, she is residing with her father and dependent on him and thus maintaining herself.

3. The application was opposed by stating that the respondent/ father-in-law is an old aged person, he himself is dependent on his sons and is not in a position to maintain the daughter-in-law.

4. The parties led their respective evidence, both oral and documentary on specific issues as to whether father-in-law was possessed of joint family property, out of which, no share has been given to deceased son Ashok Singh and therefore, whether the widowed daughter-in-law is entitled to maintenance.

5. Upon appreciation of oral and documentary evidence on record, learned Lower Court rejected the application stating that father-in-law has no means to maintain the daughter-in-law.

6. Aggrieved by the said judgment and decree, learned counsel for the appellant argued that the judgment of the Court below suffers from inherent contradiction.

7. Elaborating his submission, learned counsel for the appellant would argue that even though, learned Court below recorded specific finding in the order that the father-in-law is possessed of coparcenary property and the daughter-in-law has not received any share out of that property, has rejected the application. He would submit that necessary jurisdictional facts entitling the appellant to receive a maintenance as mandated under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act of 1956') were pleaded in the application and also deposed in the affidavit. Therefore, in these circumstances, the appellant was entitled to appropriate maintenance from the father-in-law. Reliance has been placed on the judgment of the Punjab and Haryana High Court in the case of **Jal Kaur W/O Sadhu Singh Vs. Pala Singh S/O Budh Singh, AIR 1961 PH 391.**

8. Learned counsel for the respondent opposes and submits that the Court below has rightly rejected the application because it was found that the father-in-law is an old and aged person about 70 years and he himself deposed that he is dependent on his sons. No specific pleadings have been made that the appellant is not getting any maintenance from her father and

mother and on the contrary, in the pleadings, it has been stated that she is being maintained by her father. Therefore, in these circumstances, no statutory liability can be fastened on the father-in-law.

9. We have heard learned counsel for the parties and perused the records.

10. Under the statutory scheme of Hindu Adoptions and Maintenance Act, 1956, a widowed daughter-in-law is entitled to maintenance from her father-in-law under Section 19 thereof. The relevant provision, casting statutory obligation on the father-in-law is extracted herein below :

“S.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.”

A fair, logical and rational interpretation of Section 19 of the Act of 1956 would show that the statutory obligation on the father-in-law to maintain the daughter-in-law would arise only when the conditions exhaustively enumerated in sub-section (1) of Section 19 of the Act of 1956 are fulfilled. While the first part of sub-section (1) provides that a Hindu wife shall be entitled to maintenance after the death of her husband, by her father-in-law, such right is available and limited to the extent when 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 either from the estate of her husband or her father or mother, or from her son or daughter, if any, or his or her estate. It is only when all other sources of getting maintenance and earnings are not available that there arises statutory obligation on the father-in-law to provide maintenance to widowed daughter-in-law. The statutory scheme of the Act is quite clear that the father-in-law would be obliged under the law to maintain widowed daughter-in-law only when all other sources of income as stated in proviso to sub-section (1) are closed and not available. Therefore, in order to get maintenance from the father-in-law, the widowed

daughter-in-law is required to specifically plead and prove by leading cogent, reliable and clinching evidence that all other sources of income maintenance has stated in sub-section (1) are not available to her. In the absence of specific pleadings and evidence regarding any of the sources of earning maintenance stated in sub-section (1) either not pleaded or not proved, the statutory obligation could not be fastened on the father-in-law, irrespective of whether or not he holds any coparcenary property, out of which, daughter-in-law has not obtained any share.

11. If we look into the pleadings and evidence of the application, we find that though the appellant has pleaded and proved that she is unable to maintain herself out of her own earning or other property, there is no specific pleadings, much less evidence to fulfill statutory conditions enumerated in clause (a) & (b) are proviso to sub-section (1) of Section 19 of the Act of 1956. There is no pleading, as required under the law, that she is unable to obtain maintenance from her father or mother. On the contrary, in paragraph 8 of the plaint, she has stated that she is dependent on her father. In the evidence also, neither the appellant nor any of her witnesses have come out with the specific evidence that she is unable to get maintenance from her father and mother. Therefore, in the absence of such statement made either in the pleadings or evidence, the appellant could not seek enforcement of statutory obligation of father-in-law, which could be enforced only in the event she is able to prove the legal requirement of sub-section (1) of Section 19 of the Act of 1956.

12. Therefore, only for that reason, we find ourselves unable to interdict with the order of the learned Court below. The decision relied upon is distinguishable because in that case, it was neither raised nor the Court had occasion to decide whether the widowed daughter-in-law has fulfilled the legal requirement of proviso to sub-section (1) of Section 19 of the Act of 1956.

13. In the result, we do not find any merit in the appeal. The appeal is therefore dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge