

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 102 of 2017**

1. Balaram Kesharwani S/o Late Shri Tiharu Kesharwani, Aged About 75 Years R/o Bhoghapara, Sheorinarayan, Thana Sheorinarayan, Tahsil Nawagarh, Civil And Revenue District Janjgir-Champa, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Malti Bai Kesharwani W/o Late Shri Pushpamitra @ Butari, Aged About 35 Years R/o Bhoghapara, Sheorinarayan, Thana Sheorinarayan, Tahsil Nawagarh, Civil And Revenue District Janjgir-Champa, Chhattisgarh.
2. Om Kesharwani S/o Late Shri Pushpamitra @ Butari, Aged About 5 Years Minor Through Natural Guardian Mother Smt. Malti Bai Kesharwani, R/o Bhoghapara, Sheorinarayan, Thana Sheorinarayan, Tahsil Nawagarh, Civil And Revenue District Janjgir-Champa, Chhattisgarh, At Present R/o C/o Bharat Kesharwani, Rohit Kirana Stores Damdama Chowk Hasuwa, Thana Gidhouri, Tahsil Kasdol, Civil And Revenue District Balodabazar-Bhatapara, Chhattisgarh.
3. Narayan Kesharwani S/o Late Shri Pushpamitra @ Butari, Aged About 3 Years Minor Through Natural Guardian Mother Smt. Malti Bai Kesharwani, R/o Bhoghapara, Sheorinarayan, Thana Sheorinarayan, Tahsil Nawagarh, Civil And Revenue District Janjgir-Champa, Chhattisgarh, At Present R/o C/o Bharat Kesharwani, Rohit Kirana Stores Damdama Chowk Hasuwa, Thana Gidhouri, Tahsil Kasdol, Civil And Revenue District Balodabazar-Bhatapara, Chhattisgarh.

---- Respondents

For Appellant	-	Shri Sunil Sahu, Advocate
For Respondents	-	Shri Prasoon Agrawal, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Rajani Dubey

Judgment On Board

By

Hon'ble Shri Prashant Kumar Mishra J.

09-03-2021

1. This appeal under Section 19 (1) of the Family Courts Act would assail the legality and validity of the impugned Order passed by the Family Court partly allowing the respondent's application under Section 19 read with Section 22 of the Hindu Adoptions and Maintenance Act, 1956.
2. Admittedly, respondent No.1 Malti bai was married to appellant's Son Pushpmitra @ Butari on 14-12-2005 and had two sons out of the said marriage. Pushpmitra died on 23-10-2014. Since thereafter, she is residing separate in the same township.
3. According to the respondents, the family owned properties in which her late husband had share, however, she is not provided any land for maintenance of herself and her minor sons. Although, from the shops owned by the family, appellant earns income of Rs.75-90 thousand per month; and he has agricultural properties at village-Tendua, tehsil-Bhatgaon ad-measuring 15-16 acres which fetches annual income up to lacs of rupees, but despite said affluent financial position of the appellant, the respondents have been provided only one room for shelter. Therefore, she should be provided monthly maintenance of Rs.25,000/- for rent of the house, for livelihood, for education of her sons and other necessary amenities.

4. It was the stand of the appellant before the trial Court that respondent's late husband Pushpamitra was not taking part in the family business as he was ailing for most of the time being handicapped. The respondent No.1 has not contributed in any manner in the marriage of her Sister-in-law and that she has raised the present dispute and initiated proceeding upon provocation by members of her parental house. Appellant denied to have any agricultural land in the name of Pushpamitra and further that she has entered her name in an area ad-measuring 0.11 acres at Kharaud Road, Sheorinarayan and has already separated from the family.
5. Both the parties led evidence before the trial Court to substantiate their respective averments. On appreciation of evidence, the trial Court has concluded that the appellant has agricultural land at village Tendua. The appellant's plea before the trial Court that he has already partitioned the land at Tendua amongst his sons and daughter has been taken note of by the trial Court, however, the same has been found not proved as no steps, pursuant to the alleged partition, has been taken by any member of the family and the revenue record still carries name of appellant as owner. The trial Court has found that in a notional family partition, the respondents would be entitled to at least 3.23 acres of land, therefore, on a rough estimate, the trial Court has taken the yearly income for the said area of agricultural land at Rs.32,000/- and the same amount has been allowed as yearly compensation to be paid in two equal installments.
6. Shri Sunil Sahu, learned counsel for the appellant argued that the appellant having already provided land to the respondents in a family partition, she is not entitled for maintenance. He would further submit that the appellant is not in a possession of any land and managing his

life from the pension amount of Rs.12,500/- per month, therefore, grant of maintenance to the respondents would put him to financial hardship.

7. It is settled by this Court in the matter of **Mithai Lal Vs. Premalata Sahu & Others** in FAM No.72 of 2016 that a widowed daughter-in-law can claim maintenance from coparcenary properties available in hands of her father-in-law. The following has been held this at paragraph 10-14:-

“10. A close reading of the provision would manifest that a Hindu wife is entitled to claim maintenance after death of her husband from her father-in-law, provided, however, to the extent that she is unable to obtain maintenance from estate of her husband or her father or mother or from her son or daughter, if any, or his or her estate. It is also apparent that the right conferred on the daughter-in-law is not 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. In the case at hand, it is admitted position that respondent No.1 has not got any share of property from her father or her father-in-law, i.e., the appellant. She is thus entitled to claim maintenance from her father-in-law to the extent of her husband's share in the coparcenary property.

11. In the matter of **Smt. Rani Bai V. Yadunandan Ram and another**¹ (paragraph 4) it has been held that under the Act 1956, rights of widowed daughter-in-law to maintenance are governed by Section 19 of

1 AIR 1969 SC 1118

that Act out of the coparcenary estate of the father-in-law or her late husband.

12. In the matter of **Master Daljit Singh and others V.**

S. Dara Singh and others² (paragraph 9) it is held that father-in-law is liable to maintain daughter-in-law only where he has inherited any ancestral property but not from his separate or individual property. It is also held that there has to be evidence showing coparcenary property in hands of father-in-law.

13. Again, in the matter of **Animuthu V. Gandhiammal**

and another³ similar proposition has been laid down to hold that when there is no factual obtaining of a share in the coparcenary property a widow could claim maintenance against the coparcenary property from her father-in-law. The quantum of liability of the father-in-law depends on his means to do so from any coparcenary property in his possession.

14. Law is thus fairly well settled that a widowed daughter-in-law can claim maintenance from coparcenary property available in hands of her father-in-law.”

8. In the case at hand, it is an admitted position that the appellant owns coparcenary agricultural land at village Tendua, apart from other properties at different places. There is no proof of partition nor correction of revenue record has taken place consequent upon the alleged partition, which the appellant claims to have effected amongst

2 AIR 2000 DELHI 292

3 AIR 1977 MADRAS 372

the family member.

9. Appellant has produced before us a copy of *Will* executed by him, however, this (*Will*) will take effect after his death, if it is not cancelled or modified. It is not in operation, therefore, it has no legal effect whatsoever nor can be construed to mean that the appellant has parted with some area of agricultural land at village Tendua in favour of respondents.
10. In view of the above, grant of maintenance of Rs.32,000/- per annum in favour of the respondent does not appear to be illegal or unjustified. Considering the total area of land available with the family, now at the hands of appellant, the amount also does not seem to be exorbitant.
11. In view of the foregoing, the appeal being bereft of any substance, it deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Rajani Dubey)
Judge

Amardeep