

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 242 of 2019

Shri Kumar S/o. Bugli Markandey, aged about 42 years, R/o. Village Chongi Khapri, P.O. and Police Station Devkar, Tahsil Berla, District Bemetara (CG)

---- Appellant

Versus

1. Smt. Satroopa Wd/o. Late Ratanchand, aged about 24 years,
2. Ku. Pooja D/o. Late Ratanchand, aged about 4 years,
3. Jai Markandey S/o. Late Ratanchand, aged about 1year,

Both minor through their natural guardian namely Smt. Satroopa Wd/o. Late Ratanchand, aged about 24 years,

All above R/o. Village Nawagaon, P.O. Bawamohtara, Tahsil and District Bemetara (CG)

---- Respondents

For the Appellant :- Mr. Vaibhav A. Goverdhan, Advocate

For the respondents :- None

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board

By Vimla Singh Kapoor, J.

23.08.2021

1. None for the respondents though served even after paper publication. The relevant documents along with application for taking document on record relates to service of notice to be published are taken on record.

2. This appeal is directed against order dated 27.07.2019 passed by the Family Court, Bemetara, by which the application for grant of maintenance under Section 19 of the Hindu Adoption and Maintenance Act, 1956 so far as it relates to respondents No. 2 and 3 – the children of respondent No.1 and the deceased-husband, has been rejected whereas that of the respondent No.1/wife has been allowed granting her maintenance of Rs. 3000/- per month instead of Rs. 8,000/- per month.
3. Admitted facts are that appellant is the father-in-law of respondent No.1. Respondent No.1 was married to appellant's son namely Ratanchand, who later on expired. Immediately after his death, the respondent No.1 left her matrimonial house and started residing with her father. Subsequently, she moved an application claiming maintenance of Rs. 8000/- per month from the appellant/father-in-law, *inter alia* pleading that after the death of her husband, he did not take care of her or her children. She further pleaded in the application that the appellant possesses sufficient land admeasuring 1.17 hectares which he inherited from his ancestors and that her husband used to help him in all possible ways during his lifetime. It was also pleaded that on 20.12.2018 when she asked the appellant to give share of her husband so that she was not required to wander here and there in search of livelihood along with her two minor children, he blatantly refused for the same. Further claim of respondent No.1 was that in the absence of any financial assistance from any nook and corner including from the appellant, she found it extremely difficult to have the both ends meet and therefore, the appellant may be directed to render her financial

assistance in the form of maintenance as was claimed in the claim petition.

4. The application for maintenance was however, opposed on behalf of the appellant herein stating that the respondent No.1 and her husband were residing separately from the appellant for last nine years and further that the appellant is always ready and willing to keep all the respondents with him, therefore, he is not required to give any maintenance to them. It was also the stand of the appellant in the Court below that it is the respondent No.1 who refused to live in the house of the appellant, she is not entitled for any maintenance from him.
5. The court below by the order impugned dismissed the claim for maintenance made on behalf of respondent No.2 and 3 but granted an amount of Rs. 3000/- per month as maintenance in favour of respondent No.1. Hence, this appeal.
6. Learned counsel for the appellant would submit that Court below has recorded a specific finding in the order to the effect that the appellant made all possible efforts to bring the respondent No.1 back to his house but it is she who refused for the same without any rhyme or reason and started living separately with her parents. He would submit that from the evidence of AW-2 and AW-3, it is apparent that respondent No.1 is earning sufficiently of her own and thus she is able to maintain herself. Apart from this, he submits that mother of respondent No.1 has agriculture land and therefore, she is capable of maintaining her daughter without any financial constraints, and in these circumstances, the appellant is not legally required to maintain the respondents. The overall submission of the

counsel for the appellant is that the order impugned refusing maintenance to respondent No. 2 and 3 is fully justified but as far as it relates to respondent No.1 granting maintenance of Rs. 3000/- per month is liable to be set aside.

7. We have heard learned counsel for the appellant and perused the records.
8. 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."

9. 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 as stated in sub-section (1) are not available to her. In the absence of any specific pleading and evidence regarding any of the sources of earning as 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 the fact whether he holds any coparcenary property or not.

10. If we look into the pleadings and evidence of the application, we find that though the respondent No.1 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) of 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, from the statement of the witnesses, it is clear that respondent No.1 is residing separately for last so many years in her matrimonial house and further from the evidence of AW-2 and AW-3 it is clear that respondent No.1 is earning of her own by engaging herself in the labour work and thus she is able to maintain herself. Therefore, the respondent No.1 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.

11. In the result, the order impugned granting maintenance of Rs. 3000/- per month to respondent No.1 is ill founded and therefore, liable to be set aside and accordingly set aside. Appeal is allowed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge