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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st July 2023

+ CM(M) 242/2020 & CMs 7410/2020, 44507/2022

SURESH TIWARI & ANR Petitioners
Through: Mr.Vineet Jhanji & Mr. Imran
Moulaey, Advs.

versus

MADHU TIWARI Respondent
Through: Mr.Saurabh Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioners challenging the Impugned Order dated 10.01.2020 passed by the learned Judge, Family Court, East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Family Court') in HAMA No.3/2017 directing the petitioners to pay a sum of Rs.7,000/- per month to the respondent herein as *interim* maintenance from the date of the filing of the petition before the learned Family Court till the disposal of the petition.

2. The petition before the learned Family Court has been filed by the respondent herein under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as the 'Act') praying

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inter-alia for grant of maintenance at the rate of Rs.20,000/- per month from the petitioners herein, who are the parents-in-law of the respondent. The learned Family Court, as noted hereinabove, has awarded *interim* maintenance at the rate of Rs.7,000/- per month to the respondent to be paid by the petitioners.

3. The learned counsel for the petitioners submits that the Impugned Order has been passed without jurisdiction inasmuch as, in the petition filed by the respondent before the learned Family Court, there is no averment made by the respondent that the petitioner no.1, her alleged father-in-law (I am using the word 'alleged' as the petitioners also dispute that the respondent was married to their deceased son-Late Shri Ranjay Tiwari), has any coparcenary property in his possession, nor has such a finding been given by the learned Family Court in its Impugned Order. He submits that the respondent, even assuming her to be legally married wife of the son of the petitioners, would be entitled to receive maintenance from the petitioner no. 1 only if the petitioner no.1 has any coparcenary property in his possession. In absence of such averment by the respondent or finding by the learned Family Court, petitioner no. 1, alleged father-in-law of the respondent, cannot be made liable to pay maintenance to the respondent. In support of his submissions, he places reliance on the judgment of the Supreme Court ***Vimalben Ajitbhai Patel v Vatslabeen Ashokbhai Patel***, 2008 (4) SCC 649; of this Court in ***Laxmi & Anr. v. Shyam Pratap & Anr.***, Neutral Citation: 2022/DHC/001719; and the judgment dated 31.05.2019 passed by Punjab & Haryana High Court in FAO-7203-2017 (O&M),



titled *Satpal v. Suman & Ors.*

4. On the other hand, the learned counsel for the respondent, while not disputing the above submissions of the learned counsel for the petitioners, submits that the respondent has now become aware of certain coparcenary properties in the possession of the petitioners. He submits that, in fact, there are certain properties of the late husband of the respondent which are now being held by the petitioners. He submits that he shall be moving an appropriate application before the learned Family Court to bring on record the above facts.

5. The learned counsel for the petitioners disputes the assertions of the learned counsel for the respondent that there are any coparcenary properties held by the petitioner no.1 or that there are any properties of the late husband of the respondent being held by the petitioners.

6. Be that as it may, the Impugned Order, which grants *interim* maintenance to the respondent, cannot be sustained. Section 19 of the Act reads 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.”

7. Interpreting the above provision, the Supreme Court in **Vimalben Ajitbhai Patel** (supra) has held as under:

“21. 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 obligation 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 must have 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.”

8. This Court in **Laxmi & Anr.** (supra) has reiterated that a daughter-in-law can claim maintenance from her father-in-law, provided that the father-in-law has inherited some estate of her husband. In absence of any such disclosure, the daughter-in-law cannot maintain such claim against the father-in-law; in any case, claim cannot be maintained against the mother-in-law.

9. In **Satpal** (supra), the Division Bench of Punjab & Haryana High Court also reiterated that for invoking the provision of Section 19 of the Act, the widowed daughter-in-law has to show that the father-in-law has coparcenary property in his possession. Such claim will not lie against the salary of the father-in-law or against his self-acquired property.

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10. In the present case, as the petition filed by the respondent stands today, there is no averment of the petitioner no.1 holding any coparcenary property against which the respondent can maintain her claim under Section 19 of the Act. The Impugned Order also does not give any such finding. The Impugned Order, therefore, cannot be sustained and is accordingly set aside.

11. As far as the plea of the learned counsel for the respondent that the respondent has now become aware of coparcenary property in the possession of the petitioner no.1 and/or that the petitioners are holding properties belonging to the late husband of the respondent, in absence of such averments before the learned Family Court, they cannot be taken cognizance of at this stage by this Court. The respondent shall be free to move an appropriate application in this regard before the learned Family Court, and the same shall be considered by the learned Family Court remaining uninfluenced by any observations made in the present order.

12. The petition and the pending applications are disposed of in the above terms.

NAVIN CHAWLA, J

JULY 31, 2023/Arya/rp

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