



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO. 28/2021

1. Shamuji s/o Jyotiram Lokhande,
aged about 65 yrs., Occ. Business (deceased)
through his Legal Heir;

1-A. Smt. Reema wd/o. Shamuji Lokhande,
Aged about 50 yrs., Occ. Household
R/o. Swami Sadan, B-wing, Flat No.101,
G.P.O. Chowk, Civil Lines, Nagpur.

2. Suryakant s/o Shamuji Lokhande,
Aged about 35 yrs., Occ. Business,
R/o. Swami Sadan, B-wing, Flat No.104,
G.P.O. Chowk, Civil Lines, Nagpur.

3. Sudarshan s/o Shamuji Lokhande,
Aged about 40 yrs., Occ. Business,
R/o. Swami Sadan, B-Wing, Flat No.101,
G.P.O. Chowk, Civil Lines, Nagpur.

(Original Respondents)

...APPELLANTS

On R.A.

VERSUS

1. Smt. Sonali wd/o. Sunil Lokhande,
Aged about 31 yrs., Occ. Household,
2. Ku. Vibhanshi d/o Sunil Lokhande,
Aged about 15 yrs, Occ. Student, being
minor represented through her natural
guardian (mother) i.e. Smt. Sonali wd/o.
Sunil Lokhande,

Both residents of c/o Rupchand s/o. Jagoli
Gondane, Plot No.70, Jai Bhim Nagar, near

Buddha Vihar, Post Parvati Nagar, Nagpur-27.

(Original petitioners)

3. Smt. Sunita w/o Manoj Motghare,
aged about 45 yrs., Occ. Household,
R/o. Flat No.G-603, Ektabhumi, Garden
Apartment, Rajendra Nagar, Borivali (East),
Mumbai-66

(Original Respondent No.1-B)

RESPONDENTS

On R.A.

Mr. U.P. Dable, Advocate for appellants.

Mr. S.G. Malode, Advocate for respondent Nos. 1 & 2.

CORAM : **NITIN B. SURYAWANSHI AND**
M. W. CHANDWANI, JJ

JUDGMENT RESERVED ON : 23.01.2025

JUDGMENT PRONOUNCED ON : 18.03.2025

JUDGMENT : (PER: NITIN B. SURYAWANSHI ,J.)

Heard.

2. This appeal filed under Section 19 of the Family Courts Act, 1984 challenges the judgment and decree passed by the Family Court No.2, Nagpur on 14.01.2021, thereby allowing the petition filed by

the respondents under Sections 19, 20 and 22 of the Hindu Adoptions and Maintenance Act for grant of maintenance.

3. By filing petition under Sections 19, 20 and 22 of the Hindu Adoptions and Maintenance Act, respondents/original petitioners claimed maintenance from petitioners/original respondents contending that marriage of respondent No.1/original petitioner No.1 with Sunil Lokhande was solemnized on 07.12.2003 at ladies Club, Nagpur. Respondent No.2/original Petitioner No.2 was born out of wedlock on 27.11.2004. On 13.11.2005, Sunil met with an accident and expired. Original Petitioner No.1/widow and original petitioner No.2/grand-daughter stayed with in-laws at the property described in paragraph No. 3(c) of the petition. On 28.06.2005, due to fire incident, the entire building was burnt. Thereafter, they started residing with in-laws at Flat No.104 described in paragraph No.3(o) of petition.

4. During the stay of original petitioner No.1 and original petitioner No.2 with father-in-law Shamuji, he had taken responsibility of educational expenses of original petitioner No.2. He used to bear all day to day expenses of the house, but there was no

freedom to the original petitioner No.1 to claim extra amount for their personal expenses. She was not given any amount in her hands. Occasionally, Original petitioner No.1 and original petitioner No.2 were not introduced to others. All in-laws of original petitioner No.1 and their wives were not behaving befitting the honour and respect of widow, who had 1/5th share in the property owned by Shyamuji and others. Father-in-law (original respondent No.1) along with his sons took over the charge of business of 'Kabadi and Scrap Material' from his father. There were five firms (i) Jyoti Polymers, (ii) S.S. Bottles, (iii) Satyam Enterprises, (iv) Jyoti Plastic and Scraps and (v) Jyoti Scraps. In-laws have employed 25 to 30 persons in their scrap business. There are 5 to 6 trucks and also cars of similar numbers. There are 20 to 25 motorcycles used by the family of in-laws and their staff. In these firms, father-in-law and his two sons were jointly carrying on all the family business of scrap material in whole Nagpur District and also in Vidarbha region. Their day to day earning from these businesses was not less than Rs. 5,00,000/-. Till his death, husband Sunil of original petitioner No.1 toiled hard for upliftment and progress of the family business. He used to work round the clock

to achieve the maximum benefits and profits, as the business and properties were joint. After death of father-in-law, his sons original original respondent Nos. 2 and 3 are enjoying the entire ancestral properties. Original Petitioner No.1 has no source of income. She is unable to maintain herself and her daughter. After the death of husband, original petitioner No.1 along with her daughter stayed with in-laws till 10.04.2014. During that period, she was made to work from dawn to dusk for their two time meals and shelter. She was treated like a maid servant and they were starving for every penny when they were entitled to lead their life at the same standard of in-laws and their respective wives and children. Original petitioner No.2 could not get milk to drink in her childhood in the renowned family of the in-laws.

5. Original Petitioner No.1 requires Rs. 25,000/- per month towards maintenance, Rs. 10,000/- per month for hiring a rental flat and Rs.10,000/- per month towards education and other expense of her daughter who was studying in 5th standard in Bhavan School at Nagpur. Amount is also needed for transport and other expenses. Therefore, claim of Rs. 45,000/- per month for maintenance was

made in the petition, out of the income of the firms and from 1/5th share of deceased Sunil. Prior to filing of petition, they issued legal notice dated 11.08.2014 claiming maintenance. In-laws replied said notice on 18.08.2014 and refused to give maintenance.

6. In-laws resisted the claim by filing written statement at Exh. 17 and denied all the contentions raised by the Original petitioners/respondents. It is admitted that Original respondent No.1 (father-in-law) purchased properties in the name of his minor sons Sunil, Suryakant and Sudarshan. Property described in paragraph 3(c) of the petition was multi-storied house which was gutted down in fire on 28.06.2005. Other properties described in paragraph No.3 in the petition are independent properties of original respondent Nos. 2 and 3. The business of 'S.S. Bottles Traders' is a proprietary concern run by original respondent No.1. Except that, he had no other source of income. Original Respondent No. 1 desires to maintain original petitioners. He is ready to give the best education to original petitioner No.2. He wants to do something for them during his life time. Original Petitioners had no right to claim maintenance against brother-in-laws, who are earning independently. In case, the original

petitioners prefer to reside with original respondent No.1, he will do his best to maintain them as they were maintaining them from last 9 years. He has deposited Rs. 45,000/- towards the annual fees and Rs.1862/- for books of original petitioner No.2. It is further stated that Flat No.104 at Sr. No.3(o) is the exclusive property of original respondent No.2 (Suryakant) and Flat No.101 is the exclusive property of original respondent No.3 (Sudarshan). Both of them are carrying their individual business. Parents of respondent No.1 and his wife are living with Suryakant. Parents have their independent business and source of income. Original Respondent No. 3 is also doing independent business. He is living in Flat No.101, at Sr.No.3(o) of the petition. Except the properties 3(c)(i), all the other properties have been purchased by original respondent Nos. 2 and 3 from their own earnings.

7. Sunil husband of original petitioner No.1 has not contributed in the business activities. Original Respondent No.1 had no ancestral property nor any ancestral business. Deceased Sunil had no share in the business. Original Respondent Nos. 2 and 3 are unnecessarily made parties.

During the period of 9 years stay of original petitioners with original respondents, they were treated nicely and all facilities were provided to them without any discrimination. Original Petitioners had no grievance for 9 long years. Original Petitioners were never ill-treated. Original Petitioners had no reasons to quit the company of the original respondents. Original Petitioners should reside with original respondent No.1 in his last days and give love and affection to him.

8. During the pendency of the proceedings before the Family Court, original respondent No.1 Shyamuji expired, hence his legal heirs i.e. Mrs. Reema wd/o Shamuji Lokhande (original respondent No.1-A) and daughter Sunita w/o Manoj Motghare (original respondent No.1-B) were brought on record. Though Mrs. Reema did not file any written statement, daughter Sunita filed written statement at Exh.74. In the written statement, she has supported the case of original petitioners. She admitted that, original petitioners have 1/5th share in the properties owned and possessed by Shamuji and also in the business of 'Kabadi and Bhangar Material'. She has also admitted that original respondents are earning not less

than Rs. 5,00,000/- per day. She admitted that all the original respondents are jointly carrying on Jyotiram Lokhande's family scrap material business in the entire Vidarbha region and Sunil toiled hard for upliftment and progress of family business. Thus, she has fully supported to the case of original petitioners and lastly she has stated that she has not received any share from her parental property and therefore, she may not be held liable for payment of maintenance to the original petitioners and the liability to maintain petitioners is that of original respondent Nos. 1-A and original respondent Nos. 2 and 3.

9. The Family Court framed issues and after recording evidence, allowed petition. Being aggrieved by this decision, appellants/original respondents have filed this appeal.

10. Heard learned counsel for appellants/original respondents, learned counsel for respondents/original petitioners.

11. Learned counsel for appellants submits that on plain reading of Section 19 of the Family Courts Act, it is clear that the respondents/original petitioners ought to have claimed maintenance from father of

respondent No.1/original petitioner No.1. If that was not granted by father then only she can claim maintenance from father-in-law that to the extent of share of her husband in the estate. He submits that since respondent No.1 has failed to prove that her parents are unable to maintain her, the Family Court ought to have dismissed the petition. In support of this argument, he relied on the decision in case of *Dayali Vs. Anju Bai, 2010 SCC Online Chh 104* and *Muthammal (died) through LRs. and others Vs. V. Pavunambal and another, 2013(1) Civil LJ 399*. According to him, though this ground is not raised in the appeal, since it is a legal ground, it can be considered by this Court in absence of pleadings. He further submits that the Family Court has erroneously appreciated the evidence on record and has given findings as if it was deciding a suit for partition which is already filed by the respondents. The Family Court has failed to ascertain what is the share of father-in-law, while awarding the maintenance.

According to him, since appellants were ready to maintain the respondents, they are ready to maintain the respondents provided they stay along with appellants and without there being any justifiable reason, respondents left company of the appellants. On this ground

also, claim of maintenance should have been rejected by the Family Court, even otherwise excess amount of maintenance is awarded by the Family Court. Hence, he submits that the impugned judgment and decree is liable to be quashed and set aside.

12. Per contra, learned counsel for respondents supported the Family Court judgment. He submitted that there are no pleadings in the written statement of the appellants that her parents are able to maintain her. He submitted that there is sufficient material on record to show that deceased husband of respondent No.1 had 1/5th share in the joint family business and properties. Maintenance awarded by the Family Court is reasonable by taking into consideration the standard of living and the earnings of the appellants. Therefore, there is no merit in the appeal and same may be dismissed.

13. With the assistance of learned counsel for the parties, we have perused record, the evidence led by the parties, the judgment of the Family Court and the citations relied upon by the learned counsel for appellants.

14. Relationship between the parties is admitted, so also, death of Sunil. Admittedly, Shamuji/original respondent No.1 expired during pendency of petition and both his sons i.e. appellant No. 2/original respondent No.2(Suryakant) and appellant No.3/original respondent No.3 (Sudarshan) are looking after the business. Civil suit No.326/2015 for partition and separate possession of the share of her deceased husband Sunil filed by respondent Nos. 1 and 2 against appellants is pending. It has also come in evidence that an offer of Rs.2,00,00,000/- towards full and final settlement was refused by respondent No.1.

15. Perusal of evidence of respondent No. 1 shows that she has reiterated her pleadings in the maintenance petition. In cross-examination, she admitted that in 9 years spent by her with her father-in-law after death of her husband, she did not make any complaint. She was called upon vide notice reply to reside with her father-in-law. Respondent No.2/original petitioner No.2 is admitted by her father-in-law in Bhavan School and he was providing them basic human needs. He was incurring all the educational and other ancillary expenses of her daughter. She further states that out of 5 firms

mentioned by her, one firm by name 'Sham Enterprises' is in name of her father-in-law. She has stated in her chief that her 'हौस' was not being fulfilled. According to her, 'हौस' means articles and other things, hobbies, classes of her daughter, shopping of clothes of her daughter were not fulfilled. She has stated that she was given an offer of Rs. 2,00,00,000/- as against full and final settlement, but it was refused by her. In that cross-examination of respondent No.1, appellants have tried to project that they were ready to incur all the expenses of respondents, but respondent No.1 left the matrimonial home without any reason.

16. It is obvious from the evidence of respondent No.1 that they were being given all the basic things, when they were living with appellants. However, the grievance of respondent No.1 is that she was not given liberty to do whatever she wanted and her likings were not being cared of by deceased father-in-law. The suggestions given to her in her cross-examination that for full and final settlement, an offer of Rs.2,00,00,000/- was given and she has refused the offer, in fact, supports the case of respondents. It also indicates that the appellants are financially well off and their standard of living is high.

17. It is a matter of record that by filing application Exh. 22, respondent No.1 sought direction to the appellants to file their income tax returns which was allowed and appellants were directed to file income tax returns of last 5 years, but the appellants have deliberately avoided to file income tax returns, therefore, adverse inference needs to be drawn against them and there appears substance in the contention of the respondent No.1 that there is handsome income from the firms being run by the appellants.

18. On going through the evidence of appellant No.2/original respondent No.2 Suryakant, it is clear that he has suppressed many things from the Court like he has not filed the income tax returns of 5 years. When xerox copies of their income tax returns were confronted to him, an objection was taken that since these are not certified copies, they cannot be shown to him. He has admitted that he was having all the returns submitted to Income Tax Department. It is, therefore clear that appellants have tried to conceal their real income, so as to defeat the claim of respondent Nos. 1 and 2. He also admitted that properties at Umbargaon, Adali Fath, Umred Road, Nagpur are in his possession. He further admitted that he runs

factory of production of raw materials required for plastic items by name 'Jyoti Polymers'. It is pertinent to note that in written statement, he has stated that property described in paragraph No. 3(i) of the petition is idle land, is incorrect statement. He admitted in cross that his grandfather Jyotiramji was living at Ghat Road and in the same vicinity, there is a shop of his paternal aunt Nirmala and shop and house of his uncle Raju are situated. He has not disclosed that his grandfather Jyotiramji was running scrap material business. This also shows that he has attempted to conceal the truth from the Court. At the time of death of his grandfather in the year 1994, he was aged 16 to 18 years. Hence, it is not possible to believe that he did not know the occupation of his grandfather and what was his source of income. He has denied that the business of scrap material was their ancestral business. He also did not state as to when his father started scrap material business. There is no averment in the written statement as to when the scrap material business was started by them and when they acquired the properties. He has admitted that there is business by name 'Jyoti Polymers' at 'Midline' Imamvada in 4000 sq. ft area. His brother Sudarshan runs a scrap business at

Taj Bag, opposite Power House i.e. the property described in paragraph No. 3(d) of the petition. His brother Sudarshan is having other scrap business by name 'Jyoti Plastics and Scraps' at Wathoda, described in paragraph No. 3(e) of the petition. He is running his business by name 'Jyoti Polymers' in 3 storied building besides the liquor shop. His wife is also running the scrap business at Bhande Wadi Railway Station which was started two years ago. She is the sole proprietor. Before that his wife, he was running a business by name 'Jyoti Polymers' at that place, property described in paragraph 3(h) of the petition. He admitted that there are two Flats, Flat No. 101 and Flat No. 104. He claimed that he purchased flat No.104 and his brother purchased Flat No. 101 in the year 2006-2007. There is no pleadings in the written statement that they started earning independently prior to the year 2006-2007 and from their own income, they purchased both these flats. He avoided to give approximate value of these flats. He admitted that he is director of 'Satyam Impex Ltd.' He did not disclose when his parents became Directors of that Company and when his brother left that Company.

19. Apart from above, the oral evidence of respondents have brought on record voluminous documentary evidence showing the vehicles owned by the family of the appellants and various properties owned by them. Income Tax Returns of 2014-2015 onwards are brought on record through the Income Tax Department. The documentary evidence on record shows that appellants are running various businesses and they possess several movable and immovable properties. The properties are earned from the business of scrap material.

The tenor of evidence of this witness shows that he is suppressing true and correct facts from the Court and he has given evasive answers to the particular questions put to him in the cross-examination, only with a view to shirk the responsibility to give maintenance to the respondents.

20. Burden lies on the appellants to prove that their scrap material business is not ancestral, but they have failed to prove that. The Family Court, therefore is justified in arriving at prima-facie conclusion that the properties are purchased through family business of scrap material and those were enjoyed by deceased

appellant/original respondent No.1 Shamuji and after his death, by his wife and sons. Since the appellants are running the businesses and enjoying the properties, they are rightly held jointly and severally liable to pay the maintenance to the respondents.

21. It is a matter of record that the respondent No.3/original respondent No.1-B daughter of deceased Shamuji and appellant No.1-A/original respondent No.1-A. Mrs. Reema has supported the claim of the respondents/original petitioners. She has specifically averred in written statement that deceased Sunil had 1/5th share in the family business and properties during his life time. He had worked hard to earn profits in the family business.

22. There is sufficient evidence brought on record to show that husband of respondent No.1 had 1/5th share in the joint family property of appellants. Due to death of original respondent No.1, she is entitled to claim share in the property which would fall to the share of original respondent No.1 and present respondents/original petitioners are entitled to claim share of deceased Sunil, coparcener of Shamuji, being dependents of Sunil. There is also sufficient evidence brought on record to show that Sunil had 1/5th share in the joint

family property and he had given his best during his life time to the family business of scrap material. It is also clear from the record that appellants are enjoying joint family properties/estate, after the death of original respondent No.1 Shamuji. Since appellants are in possession of the estate of deceased Shamuji and Sunil, respondent/original petitioners are entitled to claim maintenance from the appellants in terms of Section 19 and 22 of the said Act.

23. This Court in *Madhukar s/o. Kisan Lokhande Vs. Shalu wd/o Narendra Lokhande, 2013(6) Mh.L.J. 391*, after considering Sections 19, 21 and 22 of the Hindu Adoptions and Maintenance Act held:-

“14. Section 19 of the said Act is an enabling provision under which a right of a widowed daughter-in-law to receive maintenance from her father-in-law is recognized. Proviso to sub-section (1) of Section 19 states that to the extent such widowed daughter-in-law is unable to maintain herself out of her own earnings or other property or where she has no other property of her own and is further unable to obtain maintenance from the estate of her husband or her father or mother or her children or their estate, maintenance can be claimed from the father-in-law.

15.When these provisions are construed harmoniously, first obligation to maintain his widowed

daughter-in-law is always on father-in-law. It shifts to the father of such widow only in case of inability of father-in-law or to the extent of such inability. The circumstances in which or extent to which father-in-law is obliged to discharge this obligation are the only facets regulated by Section 19.

16.....The aforesaid provisions clearly recognize the entitlement of a widowed daughter-in-law to the right of maintenance and in certain circumstances to receive such maintenance from her father-in-law.

17.....The word 'estate' has undoubtedly in law a diversity of meaning and a variety of signification. It may mean the property of a living man or that of a deceased person which passes to his administrator. Generally speaking, this word may mean the property of every character but ordinarily it is applied to the property of a deceased person or a ward or a lunatic or a bankrupt etc. according to which meaning it conveys an idea of property which is administered by administrators or executors or in Courts."

It is thus clear that the entire object of Section 19(1) of the said Act is to recognize the rights of a widowed daughter-in-law to receive maintenance from either of the sources mentioned therein. She is entitled to maintenance from other property or from the estate of her husband. It is only if the same is not possible that the liability of her father or mother to maintain her would arise.

24. In the light of aforesaid observations, argument of appellants that in absence of evidence on record that father of respondent No.1 was unable to maintain her, she was not entitled to claim maintenance from father-in-law is liable to be rejected.

In view of aforesaid, the decision of this Court in case of Dayali (*supra*) relied upon by the appellants would not assist their case.

25. In view of aforesaid observations, respondents are entitled to claim maintenance from the appellants, as appellants are in possessions of the estate of deceased Shamuji and Sunil in which deceased Sunil had 1/5th share.

26. We are unable to accept the submission of appellants that the Family Court has, in-fact, given findings which are required to be given by the Civil Court in the partition suit. Family Court has recorded its prima facie opinion in respect of properties and family businesses which is in the custody and is being run by the appellants, so as to decide the claim of maintenance of respondents. This by no stretch of imagination can be said to be a finding recorded in respect

of partition suit. The Civil Court before whom the partition suit is pending will decide it on the basis of evidence led by the parties before it.

27. In the light of above ratio and considering the evidence on record, we are of the considered view that respondents have proved their claim of maintenance. The Family Court has properly appreciated the evidence on record and has passed a well reasoned order. No case is made out by the appellants to interfere in the same. The appeal being devoid of merit, it is dismissed with costs.

28. It is made clear that above observations are limited for the purpose of deciding present Family Court appeal and shall not influence the Trial Court while deciding the partition suit instituted by respondents herein.

(M. W. CHANDWANI, J.)

(NITIN B. SURYAWANSHI, J.)