AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 72 of 2016

1. Mithai Lal S/o Ram Bihari Sahu, aged about 55 years, Caste Sahu, Occupation Govt. Servant, R/o Village Loharsi, Tahsil Pamgarh, District Janjgir-Champa, Presently Residing at Dipka, Quarter No. 155, M.D. Tahsil and District Korba, Chhattisgarh .....(Non applicant)

---- Petitioner

Versus

1. Premlata Sahu W/o Late Bhupesh Kumar Sahu, aged about 27 years, R/o Village Loharsi, Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh.
2. Dawali D/o Late Bhupesh Kumar Sahu, aged about 4 years, minor through Legal guardian mother Premlata Sahu, Resident of Village Loharsi, Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh.
3. Garima D/o Late Bhupesh Kumar Sahu, aged about 2½ years, minor through Legal guardian mother Premlata Sahu, R/o Village Loharsi, Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh .....(Applicants)

---- Respondents

For Appellant – Shri Rohitashva Singh, Advocate.
For Respondents – Shri Anand Kesharwani, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board by Prashant Kumar Mishra, J.

15/09/2016

1. This appeal under Section 19(1) of the Family Courts Act, 1984 has been preferred by the appellant, father-in-law of respondent No.1 and grand-father of respondents 2 and 3. The trial Court has granted a decree of maintenance in favour of the respondents directing the appellant to pay maintenance amount of Rs.2000/- per month to the daughter-in-law and Rs.1000/- each to two grand-daughters who are respondents 2 and 3 herein.

2. Facts of the case briefly stated are that, respondent No.1 Premlata Sahu was married with appellant's son Bhupesh on 04-05-2001 at village Loharsi. Respondent No.2 Dawali and respondent No.3 Garima are the children out of the wedlock. Bhupesh met untimely death on 27-05-2011. After death ceremony and other rituals were over, both the parties went to the house of the appellant at village Dipka. At this place, the appellant used to misbehave with respondent No.1 on the allegation that she practices witchcraft. On 18-06-2012, the appellant expelled respondent No.1 from the house on which she went back to her parental house.

3. Respondent No.1 has averred in the said application for grant of maintenance that the appellant earns Rs.40,000/- per month as salary and has agricultural land at village Loharsi from which he earns Rs.30,000/- per year, whereas, she has no source of income, therefore, the appellant be directed to pay maintenance of Rs.3,000/- per month to each of the applicants/respondents.

4. It was the stand of the appellant before the Family Court that in order to give shelter and maintenance to the respondents he had brought the respondents to his house at Dipka where they were living comfortably, however, respondent No.1 left the house of the appellant, therefore, he is not liable to provide any maintenance amount to the respondents. It was pleaded that respondent No.1 has ancestral land, therefore, it is not a case where she cannot claim maintenance from her father. Therefore, the application is not maintainable.

5. In course of trial before the Family Court, respondent No.1 examined herself as AW-1, Radheshyam Patel (AW-2), her father Biharilal (AW-3) and Pramod Kumar (AW-4). The appellant examined Tosram as NAW-1, Mithailal (himself) as NAW-2, Baldau Prasad (NAW-3) and Shyamcharan (NAW-4).

6. Learned Family Court has allowed maintenance of Rs. 2,000/- to respondent No.1 and Rs.1,000/- each to respondents 2 and 3 on appreciation that the appellant being employed in SECL having monthly salary of Rs.60,000/- per month he should pay the said amount for the maintenance of the respondents.

7. It is argued that the respondent had moved an application under Section 19 and 20 of the Hindu Adoptions and Maintenance Act, 1956 (henceforth 'the Act, 1956'). However, Section 20 is not applicable in the case and entitlement to the maintenance would be governed only under Section 19 of the Act, 1956 wherein the appellant is liable to provide maintenance to the extent respondent No.1 or her late husband had share in the ancestral property. It is argued that the appellant's salary has wrongly been considered to assess and quantify the amount of maintenance to be granted in favour of the respondents.

8. Per contra, learned counsel for the respondents would support the impugned order. According to him, the appellant has got properties as well as he being employed, he is liable to pay the amount of maintenance which is otherwise not on higher side.

9. Section 19 of the Act, 1956 provides for maintenance of widowed daughter-in-law. Said provision 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:
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> 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 re-marriage of the daughter-in-law.

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 maintenace 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 maintenace are governed by Section 19 of 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 others**[2] (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

1 AIR 1969 SC 1118

2 AIR 2000 DELHI 292

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 another**[3] 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.

15. In the case at hand there is evidence on record to the effect that the appellant is in possession of 50 decimal land at one village and 2.66 acres of land in another village. According to learned counsel, the appellant has three more sons and one daughter in addition to the deceased son, however, his daughter is already married. Since the appellant is employed in the SECL, he is not in need of any income from the agricultural property out of which he has to maintain the respondents. Thus, there would be 4 shares in 3.16 acres of land for the purpose of ascertaining quantum of income which the appellant would be liable to pay to the respondents. This apportionment of share is not for any other purpose but is only for the purpose for determination of maintenance amount. There is evidence on record to the effect that from 2.66 acres of land, the appellant earns income of Rs.30,000/- per annum. From remaining 50 decimal of land, he may be deriving additional income of Rs.5,000/- per annum. Thus, his total yearly income from the lands possessed by him shall be Rs.35,000/- per annum. If this is devided into four shares, the respondents would be entitled to Rs.9,000/- (amount rounded off) per annum. The respondents would, thus, be

3 AIR 1977 MADRAS 372

entitled to yearly maintenance of Rs.9,000/- per annum which shall be payable to them in two half yearly installments of Rs.4,500/- each.

16. The respondents 2 and 3 are found entiled to get maintenance along with respondent No.1 in view of provision of Section 22 of the Act, 1956. For this we may profitably refer to para 10 and 11 of judgment rendered by the High Court of Punjab and Haryana in the matter of **Om Prakash Chitra Vs. Smt. Sarbati and Anr.**[4] wherein the following has been held :-

> "**10.** It is not in dispute that a widowed daughter-in-law can claim the maintenance from her father in law if she was unable to maintain herself out of her own earnings or other properties and was unable to maintain herself from the estate of her husband or from the estate of her father or mother or from her son or daughter, if any, of his or her estate. Similarly, a grand daughter is also entitled to maintenance under the provisions of the Hindu Adoption and Maintenance Act, 1956. However, the argument raised before this Court is that a widowed daughter-in-law can claim maintenance from her father-in-law only if he has inherited the property of her husband and not from self acquired property of her father-in-law. The judgment of the Hon'ble Supreme Court in Vimalben Ajitbhai Patel's case (supra) relied upon by the appellant is not applicable as in that case, the right to maintenance of wife was sought to be enforced against the property of mother-in-law during the life time of the husband.
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> **11.** It may be pointed out that in Nachhattar Singh V. Satinder Kaur and Ors. 2007 (4) RCR (Civil) 826 this Court has held that the grandfather is liable to maintain grand- children if income of their parents is inadequate for their maintenance. Similarly, in Balbir Kaur v. Harinder Kaur 2003 (1) RCR 624 this Court held that the widowed daughter-in-law

4 MANU/PH/0799/2010

of a pre-deceased son is entitled to claim right of maintenance against the self-acquired property of her father-in-law."

17. For the foregoing reasons, the appeal is allowed in part; while setting aside the impugned decree, the appellant is directed to pay a sum of Rs.9,000/- per annum to the respondents from the date of moving the application, payable in two half yearly installments of Rs.4,500/-. The appellant shall pay first installment during period 1st January to 15th January and the second installment shall be paid during period 1st July to 15th July. The arrears as well as the installment shall be paid to respondent No.1.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge

Aadil