



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No.200 of 2015

{Arising out of order dated 2-12-2015 passed by the Judge, Family Court, Janjgir, District Janjgir-Champa, in CMJC No.30/12

1. Nand Kishore Lal

---- Appellant

Versus

1. Shrimati Chanchala Lal

---- Respondent

For Appellant  
For Respondent

Mr. Sanjay Patel, Advocate  
Mr. Sourabh Sahu, Advocate

Hon'ble Mr. Justice Goutam Bhaduri &  
Hon'ble Mr. Justice Deepak Kumar Tiwari  
Judgment on Board

**Per Goutam Bhaduri, J.**

04-07-2022

1. Challenge in this appeal is to the order dated 2-12-2015 passed by the Judge, Family Court, Janjgir, District Janjgir-Champa, in CMJC No.30/12 wherein maintenance has been directed to be paid to the widowed daughter-in-law (respondent herein) as against her father-in-law (appellant herein).
2. The facts, in brief, are that the respondent was married to the son of the appellant namely; Ashwani Kumar Lal on 11-7-2008. The



husband of the respondent died on 21-6-2012. According to the respondent, after the death of her husband there was a considerable change in the behaviour of in-laws towards her and she was almost deserted in the family. Having reported the facts to her father, she was taken to her parental home. The respondent further pleaded that the bank passbook and ATM card, which belong to her husband were kept by the in-laws. The respondent also pleaded that at village Haretikala, Tahsil Jaijaipur ancestral property of 11.78 acres and at village Jaijaipur 3.97 acres of agricultural land are held by the appellant. In addition, three shops and house situated at different places of Korba wherein right of late husband of the respondent is also vested. According to the respondent, she has no source of income to maintain herself, as such, an amount of Rs.7,000/- per month was claimed towards maintenance.

3. In reply to the averments made by the respondent, the appellant contended that the respondent herself left the matrimonial home and she was never deserted by his family members. He further contends that in order to treat the ailment of his son (husband of the respondent), considerable amount was spent, as such, the appellant does not have any source of income and, therefore, he is unable to pay the maintenance.
4. Learned family Court after evaluating the evidence by the order impugned directed the appellant to pay an amount of Rs.2,500/- per month towards maintenance of the respondent.



5. Mr. Sanjay Patel, learned counsel appearing for the appellant, would submit that in order to get the maintenance from the father-in-law, the daughter-in-law is required to plead and prove that she does not have any source of income and she is unable to get the maintenance from the estate of her husband. According to him, these facts have not been proved by the respondent by placing reliable and cogent evidence. He would further submit that the document filed under Order 41 Rule 27 of the Code of Civil Procedure (henceforth 'the CPC') before this Court would show that certain lands have already been recorded in the name of daughter-in-law, therefore, she can earn her livelihood from such properties and consequently the father-in-law cannot be forced to pay the maintenance. To buttress his contention, learned counsel would place reliance upon the decisions rendered by this Court in *Dayali Sukhlal Sahu v Anju Bai Santosh Sahu*<sup>1</sup> and *Parwati v Danpatra Singh and Ors.*<sup>2</sup>

6. Mr. Sourabh Sahu, learned counsel for the respondent, *per contra*, would submit that the respondent has pleaded that she is unable to maintain herself and the property, which was held by the appellant as a Manager, is a coparcenary property, wherein the right of the deceased husband of the respondent was vested. He would further submit that since the amount of maintenance was not paid from the estate of her husband as such the respondent (daughter-in-law) was entitled to get maintenance from the appellant (father-in-law).

<sup>1</sup> 2010 (3) CGLJ 459

<sup>2</sup> 2021 (1) CGLJ 328



7. We have heard learned counsel for the parties and perused the evidence and documents available on record.
8. In order to ensure the maintenance to the daughter-in-law, Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (henceforth 'the Act, 1956') would be relevant, which is quoted below :

**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 re-marriage of the daughter-in-law.

9. In the application filed by the respondent, it has been pleaded that after the death of her husband on account of ill treatment of her in-laws she left the matrimonial home. She stated that the bank passbook and ATM of her deceased husband were also kept by in-laws and therefore, she was forced to be rescued by her father at her





parental home at village Birra. With respect to property, specific pleading is made that at village Haretikala, Tahsil Jaijaipur ancestral property of 11.78 acres and at village Jaijaipur 3.97 acres of agricultural land are held by the appellant. In addition, three shops and house situated at different places of Korba are in possession of the appellant. She also pleaded that she has no source of income to maintain herself and her father is also a poor person as such he is unable to maintain her. The respondent pleaded that neither she received any property from the estate of her husband nor from her father or mother. The entire property is in possession of the father-in-law, therefore, she, being not re-married, is entitled for maintenance.

10. With regard to allegation of misbehaviour, it was vehemently denied by the appellant and stated that the father of the respondent is a rich person and he is running a crusher, therefore, he can maintain the respondent. Thus, the in-laws would not be liable to pay maintenance to the daughter-in-law. Except these facts no specific denial was made.

11. Before this Court an application under Order 41 Rule 27 of the CPC was filed to show that the respondent is in possession of certain lands. Specific query when was made by the Court as to whether these properties are joint property, it was stated by the appellant that in respect of the property a partition suit was filed and after the decree mutation has been made in the revenue records. Learned

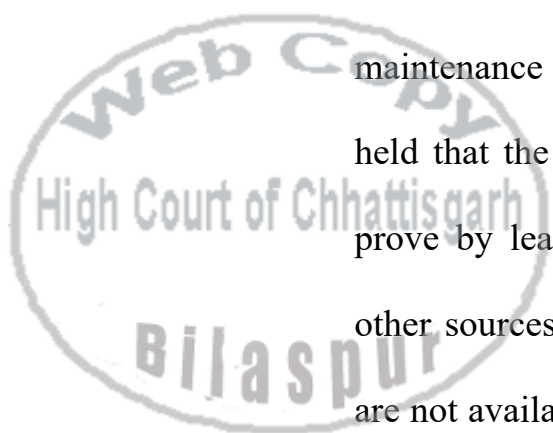


counsel would submit that the said partition decree is subject of appeal, which is pending consideration before this Court. When specific query was made as to whether the respondent is in possession of the said property no plausible answer was given on the ground that certain litigation are pending, which may have effect on that.

12. At this juncture, learned counsel for the respondent would submit that still the respondent is not in physical possession of the said properties and she has no source of income to maintain herself.

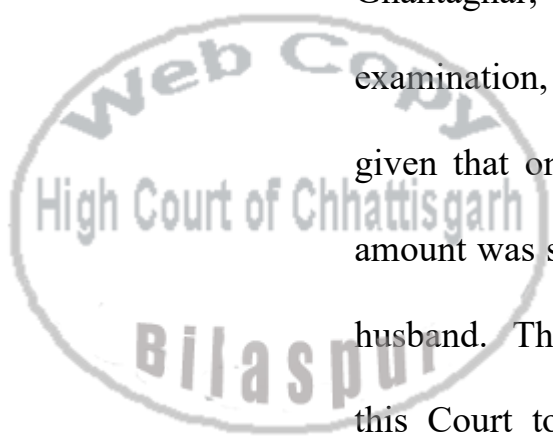
13. This Court in *Parwati* (supra) has considered the scheme of maintenance to be granted to the daughter-in-law wherein it was held that the daughter-in-law is required to specifically plead and prove by leading cogent, reliable and clinching evidence that all other sources of income as stated in sub-section (1) of Section 19 are not available to her, then only the subsequent provisions of sub-section (2) of Section 19 can be pressed into.

14. This necessarily leads us to go back to sub-section (1) of Section 19 of the Act, 1956. It purport that a Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law if 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.





15. The respondent examined herself as PW-1 wherein she deposed that because of ill treatment meted out to her by the family members of her in-laws she is constrained to stay at her parental home. In respect of holding of immovable properties, the respondent further adduced evidence that at village Haretikala, Tahsil Jaijaipur ancestral property of 11.78 acres and at village Jaijaipur 3.97 acres of agricultural land are available with superstructure. She also deposed that House No.MIG-40 situated at Korba is a two storied building and the ground floor has been rented out and another house is at Jaminipal, which is also rented out. Shop situated at Ghantaghar, Korba, has also been given on rent. In her cross-examination, nothing has been rebutted. Instead suggestion was given that on account of medical treatment of her husband hefty amount was spent as such she is not entitled to get the estate of her husband. The revenue record (Ex.P/1, P/2 & P/3) is placed before this Court to show that the mutation has presumptive value of correctness unless rebutted, which would show that the lands are recorded in the name of Nand Kishore, S/o Pyarelal. The statement of plaintiff is unrebutted that it was an ancestral property.
16. Only solitary statement is made by DW-1 Nand Kishore that in order to provide maintenance, he does not hold any coparcenary property. He denied the suggestion in cross-examination that in village Haretikala he holds the land. Similar statement is made by DW-2 Resham Lal Chandra and made a solitary statement that the appellant do not hold any coparcenary property.





17. As against this when Ex.P/1, P/2 & P/3 are examined which are revenue records though it is recorded in the name of Nand Kishore, but the acquisition of such property how it was acquired has not been placed before the Court. Neither any sale deed nor any gift deed showing acquisition of lands to be exclusive property of Nand Kishore is on record. It is obvious that when the property was said to be a self acquired property then the source of it could be either by way of purchase or gift. If the property has been purchased during his life time then the sale deed should have been placed before the Court to show the source of acquisition. If the sale deeds or gift deeds are not produced, which obviously appears to be in possession of appellant (father-in-law) and the Court is bound to draw adverse inference that the property possessed by the appellant is coparcenary property.

18. Sub-section (2) of Section 19 has the meaning and scope as that it only be extended to “ancestral property”, which is coparcenary property on account of its being ancestral according to the Mitakshara, therefore, the term “coparcenary property” occurring in Section 19(2) would consist of ancestral property, or joint acquisitions, or property thrown into the common stock and accretions to such property.

19. As per the provisions enumerated under Section 19 of the Act, 1956 the widowed daughter-in-law can claim maintenance only if she is unable to maintain herself out of her own earnings or out of estate





of her husband or her father or mother, or from her son or daughter, if any, or his or her estate. The right to claim maintenance by widowed daughter-in-law is conditional. The father-in-law having in possession of coparcenary property out of which widowed daughter-in-law has not obtained any share, therefore, the right to receive maintenance from the father-in-law would be limited to the share of coparcenary property held by the father-in-law in his hand in which the widowed daughter-in-law has not taken any share. The preferential right when is considered under sub-section (1) (a) of Section 19 would show that the widowed daughter-in-law would be entitled to claim maintenance firstly from the estate of her husband and thereafter claim can be made from her father or mother. Though the word in Section 'or' is used, which gives the right to a widow to claim from either of the people enumerated in Section, yet the Section is sub divided into part (a) & (b). So the preferential precedents exists giving an option to widow. Thus, it is crystal clear that the estate of husband comes first to claim maintenance by widow.

20. It is the well settled proposition of law that the manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children, and on the death of one of the male members he is bound to maintain his widow and his children. (See: *Sri Raja Bommadevara Raja Lakshmi Devi Amma Garu v Sr Raja B. Naganna Naidu Bahadur*



*Zamindar Garu and Another*<sup>3</sup> and *Bhagwan Singh and Others v Mt. Kawal Kaur and Others*<sup>4</sup>).

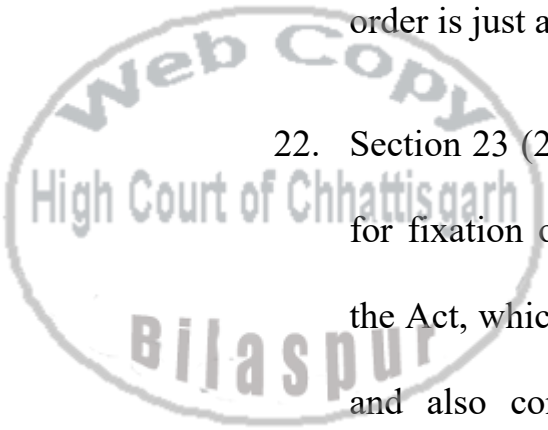
21. In view of the above stated facts and circumstances, when the estate of the husband is held in the hands of the father-in-law, the daughter-in-law cannot be forced to leave the estate of her husband and to follow the estate of her father or mother. Thus, we are of the considered view that the estate of husband can be preferred to claim over the father or mother of the daughter-in-law. Consequently, we hold that the daughter-in-law (respondent herein) would be entitled to claim maintenance from the father-in-law. Thus, the impugned order is just and proper and there is no illegality or infirmity.

22. Section 23 (2) of the Act, 1956 prescribes power of the adjudicator for fixation of maintenance. Considering the benevolent object of the Act, which is meant for removal of disabilities of Hindu women and also considering the evidence of the respondent that the appellant has a considerable income apart from the properties, as the properties have been diverted to two sons excluding the deceased husband of the respondent, we deem it appropriate to enhance the maintenance amount from Rs.2,500/- to Rs.4,000/- per month taking into the consolidated share in the property and estimated proposed income.

23. Accordingly, the appellant is directed to pay Rs.4,000/- per month in favour of the respondent from the date of this judgment.

<sup>3</sup> AIR 1925 Madras 757

<sup>4</sup> AIR 1927 Lahore 280





24. In the result, the appeal is dismissed with the aforesaid observations and directions, leaving the parties to bear their own cost(s).

25. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)  
Judge

Sd/-

(Deepak Kumar Tiwari)  
Judge

Gowri





FAM No.200 of 2015  
4-7-2022

HEAD NOTE

Hindu widow can claim maintenance from her father-in-law if 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; from the estate of her husband.

हिन्दू विधवा अपने ससुर से भरण-पोषण का दावा कर सकती है यदि वह अपनी आय या अन्य संपत्ति से अपना भरण-पोषण करने में असमर्थ हो या उसके पास स्वयं की कोई संपत्ति न हो तथा वह अपने पति के संपत्ति से अपना भरण-पोषण प्राप्त करने में असमर्थ हो।

