
(2010) 06 CHH CK 0009
In the Chhattisgarh High Court
Case No : F.A. (M) No. 109 of 2008

Dayali Sukhlal Sahu

APPELLANT

Vs

Smt. Anju Bai Santosh Sahu

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 19, 19(2), 23, 23(2), 23(3)

Citation : AIR 2010 Chh 80 : (2010) 3 CGLJ 459

Hon'ble Judges : Rangnath Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the order dated 11th August, 2008 passed in Misc. Civil Case No. 7/07 whereby learned 3rd Additional Principal Judge, Family Court, allowing the application of the Respondent u/s 19 of the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act") has directed the Appellant father-in-law to pay maintenance @ Rs. 1200/- per month to the Respondent from the date of order.

2. The Respondent daughter-in-law filed an application u/s 19 of the Act with the averments that she was married to Santosh, son of the Appellant, who died on 19-2-2006 in a motor accident. After his death, the Appellant, his wife and Jeth harassed her and turned her out from matrimonial home and since then she is residing with her parents with 4 children in penury. The Appellant owns 8 acres of ancestral agricultural land and her husband was also entitled for share, however, she has not been given any share. Her father owns only 1 acre of land from which he is barely able to maintain his own family consisting of wife and 3 small children, whereas the Appellant has sufficient means to maintain his family.

3. The Appellant, denying the allegations made in the application, averred that the Respondent voluntarily left her matrimonial home on the very next day of death ceremony of his son. He and his wife went to bring her back when she

returned to village Ghursena with her father and only after staying for 2 days, again returned to village Kheda. The Appellant denied that he owns 8 acres of agricultural land and averred that he is willing to live with the Respondent and her children. The father of the Respondent owns 5 acres of agricultural land. That apart, he is also earning from his contract works. The Respondent herself is an educated lady and she is earning Rs. 4000-5000/- from stitching and weaving whereas the Appellant is 70 years old person with a weak eye sight. He is suffering from asthma and other old age ailments. He owns only 3 acres unirrigated land. The Respondent's husband had sold 4 acres for a consideration of Rs. 1,64,000/- during his life time and this money is presently with the Respondent. The Respondent was also paid a sum of Rs. 50,000/- by the Government on account of accidental death of her husband. She also received a sum of Rs. 1 lakh towards insurance claim on account of death of her husband. She has all the ornaments valuing at Rs. 2 lakhs which was given to her at the time of marriage.

4. On the basis of pleadings of the respective parties, issues were framed.

5. The Respondent examined herself and her witness Narad Ram, whereas the Appellant examined himself and one Ram Sewak Sahu as his witness.

6. Learned Family Court by the impugned order, allowed the application and held inter alia that the Respondent has voluntarily left her matrimonial home at Ghursena without any sufficient reasons and is residing in her parental home at Kheda. However, it is not proved that she possesses Rs. 1,64,000/-, the sale consideration of the land sold by her husband, Rs. 50,000/- which she received on account of death of her husband, Rs. 1 lakh towards insurance claim and ornaments worth Rs. 2 lakhs and Rs. 27,000/-. It was also held that she is not able to maintain herself and accordingly, maintenance @ Rs. 1200/- per month has been awarded.

7. Shri Shreekumar Agrawal, learned senior counsel appearing on behalf of the Appellant would argue that learned Family Court failed to appreciate the fact that the Respondent has admitted in para 8 of her deposition that she had applied for her husband's share in the property in the Court of Tehsildar, Nandghat and in the said proceedings, Tehsildar has passed an order on 24-9-2007. Tehsildar has given 1 acre 18 decimal of land in her share and in which she had sown paddy and thus, she has already obtained share in the property and in view of the above fact, she was not entitled for any maintenance as per proviso to Sub-section (2) of Section 19 of the Act.

8. None appeared for the Respondent though served and represented.

9. Learned Family Court, on due appreciation of the evidence available on record, has decided issue No. 1 against the daughter-in-law and held that she is voluntarily residing in her parental home at Kheda without any sufficient reason. While dealing with issue No. 3 "whether the applicant/Respondent is able to maintain herself ?" It has been held that though the Tehsildar has allotted 1 acre

18 decimal of land in the share of the Respondent daughter-in-law and she had also sown paddy in the said land, however, since the partition is disputed, it cannot be said that she is in independent possession of the property and is able to maintain herself and considering her entitlement of 1.18 acres, amount of monthly maintenance of Rs. 1200/- has been awarded u/s 19 of the Act.

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

11. From bare perusal of the aforesaid provision, it is clear that obligation of the father-in-law is not personal but it is dependent on the coparcenary property in the hands of the father-in-law, which is also subject to the conditions that (i) the daughter-in-law is unable to maintain herself out of her own earnings or other property of her own; (ii) she is unable to obtain maintenance from the estate of her husband or her father or mother; (iii) she is unable to obtain maintenance from her son or daughter or his or her estate. And the liability of the father-in-law is subject to the conditions that (i) the father-in-law has coparcenary property in his possession out of which she has not obtained any share; (ii) that coparcenary property has sufficient income and (iii) that the daughter-in-law has not re-married.

12. In order to give direction to father-in-law to discharge obligation, Family Court is required to give clear finding that the daughter-in-law is unable to maintain herself out of her own earnings or other property or, where she has no property of her own she is unable to obtain maintenance from the estate of her husband or her father or mother and father-in-law has means to discharge obligation from any coparcenary property in his possession out of which daughter-in-law has not obtained any share. On perusal of the judgment, we find that trial Court has not considered the requirements of Section 19 to be satisfied for putting the obligation on father-in-law to maintain the daughter-in-law. Order is, therefore, vulnerable.

13. u/s 19 one of the conditions for the father-in-law to maintain the daughter-in-

law is that the daughter-in-law is not able to maintain herself from the estate of her parents. A clear finding is necessary whether her parents have estate sufficient to maintain her and on what circumstances, she is unable to maintain herself or by her parents. For this purpose parents of daughter-in-law are required to be heard. This is possible if they are made parties to the suit. In their absence any finding will not bind them. Where, from the estate of the parents, the daughter-in-law can maintain herself, question of obligation of father-in-law, does not arise. It is also to be found out whether there is any coparcenary property in the hands of the father-in-law from which daughter-in-law is deprived of her share. This aspect of the matter has not been examined in this case.

14. Even though Sub-section (1) is general in terms and suggests personal liability of the father-in-law, the scope of this subsection is in-fact limited by many exceptions. Section 23 of the Act vests the Court with a discretion to determine whether any and if so what maintenance shall be awarded under the provisions of the Act and while awarding maintenance, the Court shall have due regard to the considerations set out in Sub-section (2) or Sub-section (3) of Section 23.

15. In the instant case, the Family Court has already held that the Respondent is living with her 4 children at her parental home of her own free will and she has left matrimonial home without any just and sufficient cause. It is also evident that total coparcenary party in the family consisting father and 2 sons is only 3.18 acres, as is evident from application for partition preferred by the Respondent before Tehsildar. It is also not in dispute that on application of the Respondent daughter-in-law Tehsildar has ordered 1.18 acres of agricultural land to be given to the Respondent in her share and she had sown paddy in her share of the land.

16. Thus, from the above, it is clear that the Respondent has already taken legal recourse for claiming her husband's share in the coparcenary property.

17. Considering overall evidence available on record and the fact that the claim has been made against the aged and infirm father-in-law by the claimant daughter-in-law, who is residing separately without just and sufficient cause; she has already initiated steps for establishing her rights over coparcenary property and there is an order in her favour; there is nothing on record to show that the Appellant father-in-law is deriving income from the property which would fall in the share of the Respondent daughter-in-law, and the same is sufficient to pay maintenance as ordered by the Family Court, we are of the opinion that the Family Court was not justified in awarding maintenance @ Rs. 1200/- per month against the Appellant and in favour of the Respondent daughter-in-law.

18. We have taken note of contention of the Appellant father-in-law that on application of the daughter-in-law Tehsildar has allotted her share in the ancestral property to her husband and we make it clear that the Respondent is at liberty to establish her claim over the property of her husband by taking legal

recourse.

19. In the result, the appeal is allowed and the impugned order dated 11th August, 2008 passed by the Family Court is set aside.

No orders as to costs.