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**(2009) 07 P&H CK 0126**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : FAO No. M-72 of 1998**

Sarla Singh

APPELLANT

Vs

Kr.Ajay Partap Singh

RESPONDENT

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**Date of Decision :** 28-07-2009

**Acts Referred:**

**Citation :** (2009) 4 RCR(Civil) 235

**Hon'ble Judges :** Vinod K.Sharma, J

**Advocate :** Mr. Arun Jain, Sr. Advocate with Mr. Amit Jain, Advocate. Mr. Dheeraj Chawla, Advocate., Advocates for appearing Parties

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## Judgement

Vinod K. Sharma, J. (Oral)

1. This order shall dispose of FAO No. M72 of 1998 titled Smt. Sarla Singh v. Mr. Ajay Partap Singh and FAO No. M94 of 1998 titled Kr. Ajay Partap Singh v. Smt. Sarla Singh, as they arise from the same judgment.
2. For brevity sake facts are being taken from FAO No. M72 of 1998.
3. The appellant by way of this appeal has challenged the order dated 9.2.1998 passed by the learned Additional District Judge, Chandigarh, on a petition filed under Section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") read with the Marriage Laws (Amendment) Act, 1956 for grant of permanent alimony.
4. The appellantwife filed a petition for dissolution of marriage under Section 12(1)(a) of the Act, on the ground of impotency of the respondent husband.
5. During the pendency of the petition for dissolution of marriage, an application under Section 25 of the Act was filed on 5.12.1992, alleging therein that the appellant was neither engaged in any employment nor vocation nor owns any moveable or immovable property whatsoever and, therefore, had no independent source of income, sufficient for her support and maintenance.
6. The respondenthusband hails from a feudal family being son of Kr. Prabal

Partap Singh, grandson of late Rai Sahib Yashpal Singh and great grandson Chaudhary Surajpal Singh, one of the first premier zamindar of village Jarar, Tehsil Bah, District Agra, having solvent and sound estate yielding an income of about Rs. 50,000/ (Rupees fifty thousand only) a year way back in the year 1942, which found mentioned in the publication published by the Imperial Publishing Company, Lahore, prefaced and published on 10.2.1942.

7. The claim of the appellantwife was, that the respondenthusband was a coparcener in the HUF headed by Kr. Prabal Partap Singh, his father, son of late Rai Sahib Yashpal Singh. The husband was said to be having share not only in immovable property, but also in the income of cattle fair, which was being held regularly thrice a year. He was also said to have income from cattle hats/penths, which were being held twice a week at village Jarar. It was also pleaded, that the respondent was also drawing income by way of rental from the palatial ancestral residential house at village Jarar @ Rs. 7,500/ (Rupees seven thousand five hundred only) per month. In addition, he was said to be drawing rental from 73 shops @ Rs. 72,520/ (Rupees seventy two thousand five hundred twenty only) per month. It was the case of the appellantwife, that rental was also being drawn from immovable property describable as "Jarar House", Madia Karta, Agra, which was rented out to different tenants for commercial and residential purposes. The rental from one such portion of the property was said to be Rs. 27,480/ (Rupees twenty seven thousand four hundred eighty only) per month. The income was also said to be drawn from other portions of the property, which was under tenancy of M/s Supremes & Company, Agra. The company was said to be paying rental of Rs. 10,000/ (Rupees ten thousand only) per month. One tenant, Vipin Shawhre, was said to be paying rent of Rs. 8,000/ per month and another Sh. Ganga Ram Sharma, Chemists, was paying Rs. 2,000/ (Rupees two thousand only) per month as rent. Yudhista Sharma, ADM (Retd.) was also said to be tenant in the property of the respondenthusband @ Rs. 3,000/ (Rupees three thousand only) per month. One Sh. Gupta was also said to be paying another some of Rs. 3,000/ (Rupees three thousand only) per month. The total rental income from the property was said to be Rs. 53,480/ (Rupees fifty three thousand four hundred eighty only). The respondenthusband was also said to be coparcener in other immovable property situated at Tota Ka Tal in Loha Mandi, Agra2, which was on rent with Canara Bank @ Rs. 9,960/ (Rupees nine thousand nine hundred sixty only) per month. The HUF was also said to be in possession of 60 acres of property in village Jarar and another 22 acres of fertile agricultural land at village Dhirpur, District Ferozabad, U.P. The family of the respondenthusband also had 40 acres of fertile agricultural land at village Pandoora, Tehsil and District Guna, Madhya Pradesh, which was said to be yielding an income of Rs. 2,40,000/ (Rupees Two lac forty thousand only) per annum. The respondent was also said to be in possession of residential plots scattered all over and around Agra valued at Rs. 1 crore. Father of the respondenthusband was also said to be owning, as karta, a beautiful built up flat at Ruchi Apartments, Pune, which was yielding an income of Rs. 8,000/ (Rupees

Eight thousand only) per month. He was also said to be owning another 6 acres of land at village Jarar, Tehsil Bah, District Agra. Besides this, the appellant was also said to be well educated and holding high position with M/s Kirloskar Qummins Ltd., Pune, drawing a salary of Rs. 10,000/ (Rupees Ten thousand only) per month along with other amenities. The respondenthusband was also said to be running a flourishing independent business in Guna, M.P., from where he was getting income of Rs. 20,000/ (Rupees Twenty thousand only) per month. The total income of respondenthusband as coparcener and in his individual capacity was assessed at Rs. 1,45,000/ (Rupees One lac forty five thousand only) per month. The respondenthusband was said to be income tax assessee, and his taxable income for the assessment year 198889 was Rs. 53,620/ (Rupees fifty three thousand six hundred twenty only) and for the year 198990 it was Rs. 56,900/ (Rupees fifty six thousand nine hundred only). On the pleadings referred to above, a claim of Rs. 50,000/ (Rupees fifty thousand only) per month was made by way of permanent alimony. Alternatively, it was prayed that a gross permanent alimony be granted.

8. The petition was contested by the respondenthusband, by raising preliminary objection that the petition was not maintainable, as decree of divorce had not been passed till the date of filing of the petition.

9. On merits, relationships between the parties were admitted, however, allegation of the respondenthusband being impotent, was denied. It was claimed, that the marriage could not be consummated due to act and conduct of the appellantwife, and not due to impotency of the respondenthusband.

10. However, the Court accepted the version set up by the appellantwife and allowed the petition filed by her.

11. The stand taken by the respondenthusband was, that the appellant was a graduate from Panjab University and had merit in her academic career. She also had done her postgraduation and was highly skilled and well qualified in various vocations. The appellantwife was said to be expert in stitching cloths, therefore, had her independent source of income. She was said to be earning Rs. 2,000/ (Rupees two thousand only) per month. The wife was also said to be drawing income from private tuition @ Rs. 1,000/ (Rupees one thousand only) per month and, thus, it was claimed that the wife had independent income of Rs. 3,000/ (Rupees three thousand only) per month. The case set up by the respondenthusband further was, that the appellantwife had great employment potential, as she has completed computer course. It was also pleaded, that the wife was owner of agricultural land in District Gurgaon. It was also the case, set up by the respondenthusband, that after the Jimidari Abolition Act, 1950, the family of the respondent became like small farmers. It was further pleaded that record of income of the year 1942 was not relevant in view of abolition of Jimidari Act. It was also the case set up by the respondenthusband, that the animal fair in village Jarar had become irrelevant with introduction of tractors, as the fair used to be for sale of bullocks, which ceased to have any relevance.

Income from the fair was claimed to be nominal, and further that there were many shareholders out of that income. The case set up, therefore, was, that income is not sufficient even to meet the expenses. With regard to rental value, it was stated that the respondent husband was owner of 5 acres of banjar/barani land in village Jarar and about 15 acres in Guna, M.P., which was also said to be banjar/barani and uncultivable. The stand was also taken, that there was no income from landed property, which was in the name of the respondent husband. Flat at Pune was said to be in the ownership of the respondent, but was yielding no rental income. The respondent husband also claimed, that he was a student and was unemployed, with no independent source of income. Running of own business was denied. The respondent husband pleaded that he was meeting his day to day expenses with the help of his parents. Affidavit of Smt. Krishna Singh, who was half shareholder along with her children in the entire estate, was also attached. The land of U.P.S.F.E.C.C., which was on rent at Rs. 27,480/ (Rupees twenty seven thousand four eighty only) per month, was said to be falling in the share of Smt. Krishna Singh. M/s Supremes & Company was said to be under litigation and was paying only Rs. 100/ (Rupees One hundred only) per month as rent to the father of the respondent. Some portions of the tenanted premises were said to be rent free. In support thereof, affidavits of the tenants were attached. It was also denied, that any rental income was being drawn from Yudhishtra Sharma, as the said portion was also said to be in the name of Smt. Krishna Singh. Vipin Shawhre tenant was said to have vacated the premises. It was claimed, that the father of the respondent was getting Rs. 1,000/ (Rupees one thousand only) per month from the entire Jarar House, Agra, as his half share. Tenants were said to be old and some of the families were said to be living free of charge. Rental from Canara Bank was also denied. The case set up by the husband was, that rental income by father was irrelevant for decision of application under Section 25 of the Act. It was claimed, that income of the respondent husband was nil and income tax return for the year 1991-92 showed his income to be Rs. 14,940/ (Rupees Fourteen thousand nine hundred forty only) per year.

12. In rejoinder, all the assertions made in the petition were reiterated and those in the written statement were denied.

13. On the pleadings of the parties, the learned Additional District Judge was pleased to frame the following issues :

"1. To what amount of permanent alimony the petitioner is entitled to as provided under Section 25 of the Hindu Marriage Act ? OPP

2. Relief."

14. Appellant in support of her case, examined Naresh Chander Sharma, Clerk, Canara Bank, Loha Mandi, Agra, as AW1, who stated the rate of rent to be Rs. 12,450/ (Rupees Twelve thousand four hundred fifty only) per month, out of which 50% was being paid to Prabal Partap Singh and remaining 50% to Ram

Partap Singh, Smt. Krishna Singh, Shyam Partap Singh and minor Eitu Singh.

15. AW2 Surinder Kumar Saxena, Sub Registrar, Bah, District Agra, was examined, who brought the statement of sale deeds numbering 27 w.e.f. 27.3.1993 to 23.4.1994, executed by Atul Partap Singh, son of Parbal Partap Singh, as general power of attorney of his father and others, but not that of the respondenthusband. He further stated that the actual value of property is double from that fixed by the Collector.

16. AW3 R.S. Meena, Lower Division Clerk from Income Tax Department produced income tax returns for the year 198889 to 199192 regarding income of respondenthusband.

17. Appellant appeared as her own witness as PW4 and supported her case as set up in the petition.

18. PW5 Jagdish Singh, Reader in the Civil Court, Agra, did not bring any record, but verbally deposed regarding the land owned by the father of the respondent.

19. PW6 Kr. Phool Singh father of the appellant also supported the version of the appellant.

20. The documentary evidence by way of Ex. P1 to P15 was brought on record, in support of the case.

21. The respondenthusband appeared as RW1, and tendered documents mark R1 to R5.

22. On appreciation of evidence, the learned Additional District Judge, Chandigarh, assessed the monthly income of respondent at Rs. 15,000/ (Rupees Fifteen thousand only) per month. The learned Court also held that there was no evidence led to prove the income of the appellant, therefore, it was held that she did not own any moveable or immovable property. The plea of the respondent, that he was not impotent, was not accepted in view of the decision of the learned Matrimonial Court. In view of the findings referred to above, the learned Additional District Judge assessed the permanent alimony payable to the appellantwife at Rs. 5,000/ (Rupees Five thousand only) per month, or in the alternative Rs. 10,000,00/ (Rupees Ten lac only) as lump sum. Three months" time was given to the respondenthusband to deposit the amount. A charge on 6 acres of land situated in village Jarar shown in Ex. P6 and on 20 acres of land situated at village Pandoora (Ex. P10) was created, to secure the property.

23. Mr. Arun Jain, learned senior counsel, appearing on behalf of the appellant, has challenged the quantum of permanent alimony granted to the appellant, on the plea that the learned Additional District Judge did not correctly evaluate the income of the respondenthusband. The learned senior counsel, by referring to the documentary evidence on record, contended that it was proved that the appellant had coparcenary share in the land at village Jarar, Tehsil Bah, District Agra. As per documents Ex. P1, P2, P5, P6, P9 and P10, the revenue record

placed on record, shows that as per Ex. P5 and Ex. P6, the respondent husband had share of 31.43 acre in the land at village Jarar, Tehsil Bah, District Agra, and village Pandoora.

24. It was also proved on record, that value of the share in Ex. P5 alone was Rs. 2,42,00,000/ (Rupees Two crore forty two lac only), taking into consideration the rate fixed by the Government @ Rs. 1100/ (Rupees Eleven hundred only) per sq. metre. In support of this contention, reference was made to Ex. P41 i.e. notification of the Government fixing Government rate in the year 1995. The learned senior counsel also referred to Ex. P6 to show that 32.70 acres of land was in exclusive ownership of respondent husband. Thus, total agricultural land in which the respondent husband had ownership or interest, was shown to be 64.61 acres. Reference was also made to the registered sale deed executed by Kr. Atul Partap Singh to show the value of the land in possession of the respondent husband. The details of the land owned by the husband respondent, which are not in dispute, read as under :

Class 1 ( ) land which is possession/ownership of landlords

359

Ch. Yashpal Singh s/o Ch. Surajpal Singh resident of village vide order Shri M.M. Sandilya in case No. 76/197071 under 176 Zamindari Regulation Act Khata No. 359 has been divided separately as per sets shown as under: ,

207 349 941 947 952 1029 1039 1045 1056

Bigha Biswa Biswani 17188918 8161354133411131312632273

Total 9 plots

881416

Rs. 9301

Surinder Pal S/o Ch. Yaspal Singh 349/(81418), 952 mon(11611) = Plots 2/Area (1069)

Srimati Raj Kumar w/o Yashpal Singh 941 mon/(3137), 947/(5411), 1029/(2710), 1049/(1106), 1045/32 = Plots/(15914)

Ch. Yashpal Singh s/o Ch. Suraj Pal Singh 1029 min/(1164), Annual revenue 1249 paise

Atul Partap Singh minor son of Prabhal Pratap Singh under Guardianship of Ramewari Devi mother self 207 min/(5197), 1056 min/(472) = Total Plots 02/(1069), Annual Revenue (10.82 p) landlord Bhumidar

Ajay Pratap Singh minor son of Prabhal Pratap Singh under Guardianship of Ramewari Devi mother self 207 min/(5197), 1056 min/(472) = Total Plots 02/(1069), Annual Revenue (10.82 p) landlord Bhumidar

Prabhal Pratap Singh s/o Ch. Yashpal Singh, 207 min/(5199), 1056(472) = total Plots 2/(10611) Bhumidar

Shyam Pratap Singh minor son of Surinder Pal Singh under Guardianship of Smt. Krishna Singh mother self. 941 min/(536), 5952 mon/(180), 1056 min/(354) = 3 plots/(10610), Annual Revenue 1082 paise, Bhumidar

Rampartap Singh minor son of Shri Surinder Pal Singh, under Guardianship of Smt. Krishna Kumar mother self 1056 min/(10106), lagan 1082 paise Bhumidar

25. It was also not in dispute, that the respondenthusband was employed with M/s Kirloskar Qummins Ltd., Pune, as an Executive, though the respondent claimed that he left the said job. The learned senior counsel also referred to the statement of the respondenthusband as RW1, where he admitted that he owned 5 acres of agricultural land in village Jarar and 15 acres of land in Guna, though it was claimed to be barren. He also admitted, that he had a flat of 800 sq. feet at Pune. In crossexamination, admission was made by the respondenthusband that his great grandfather Chaudhary Surajpal Singh was a premier Jamidar of Jarar estate. He also admitted that his grandfather inherited jamidari rights after the death of Chaudhary Surajpal Singh. Further, that his father and Surinder Pal Singh were two sons of Rai Sahib Jaspal Singh. The respondenthusband admitted, that Jarar House was constructed by his grandfather, out of which is father had inherited 50% share. The factum of building in Loha Mandi having been constructed by his grandfather was not denied, in which his father was said to be having half share. He also admitted, that there were shops in village Jarar, in which 50% share was of his father. He further admitted his share in the coparcenary property. The admission also was made to the effect that he had 71/2 per cent share in the income of fair and also in residential building. He also admitted big residential building in the ownership of the family. The respondent husband admitted that the properties were owned by his father and Smt. Krishna Singh, and no partition had taken place. He admitted the property to ancestral. He also admitted, that his father and brother had joint kitchen and mess and also his right of inheritance in above properties. He also admitted the photographs on the pages of book titled "The States Estates and Who's Who in India and Burma" By K.R. Khosla, where the income of the grand father of the respondenthusband was shown to be Rs. 50,000/ (Rupees fifty thousand only) an year in the year 1942. In the crossexamination, he also admitted that cattle fair in village Jarar was held twice a week, which was being held even now, however, he denied the annual income of Rs. 1.8 lac from this and stated that it was so about a decade ago, but now it had decreased. He denied existence of 73 shops, but could not tell the exact number. The taxable income for the year 198889 and 198990 was admitted.

26. By referring to the evidence recorded above, the learned senior counsel for the appellant contended that the learned Additional District Judge has not assessed the income of the respondent correctly. Thus, the contention of the learned senior counsel for the appellant was, that by no stretch of imagination,

the value of the property in the hand of the respondenthusband could be assessed at less than Rs. 12 crore. Besides this, keeping in view the qualification of the respondent, he was capable of earning handsome income.

27. Mr. Dheeraj Chawla, learned counsel appearing on behalf of the respondent, however, contended that by way of impugned judgment, the learned Additional District Judge has granted permanent alimony @ Rs. 5,000/ (Rupees five thousand only) per month, which is on the higher side and deserves to be reduced.

28. The contention of the learned counsel for the respondent was, that the documents placed on record to prove the allegations did not prove the case set up by the appellantwife, as the appellantwife has failed to connect the property with the respondenthusband. It was further the contention of the learned counsel for the respondent, that the appellant having failed to prove that the property in the hands of the father of the respondent, was ancestral coparcenary property, by leading evidence it could not be held that the appellant was coparcener, but the fact stood proved by his admission.

29. It may be mentioned here, that the respondenthusband had admitted the property to be ancestral, though he did not claim himself to be coparcener.

30. The contention of the learned counsel for the respondent further was, that nothing was proved on record as to what income was being derived from the property which was owned by the respondent or alleged ancestral property. The stand taken, therefore, was that by way of impugned judgment, the appellant has been granted permanent alimony to which she was not otherwise entitled. The contention of the learned counsel for the respondent was, that it was for the appellant to prove the income of the respondent to succeed in an application under Section 25 of the Act. The learned counsel for the respondent further referred to the income tax return, to contend that income of respondenthusband was only Rs. 13,279/ (Rupees thirteen thousand two hundred seventy nine only) and, therefore, there was no reason for the Court to have granted permanent alimony @ Rs. 5,000/ (Rupees five thousand only) per month lump sum of Rs. 10,000,00/ (Rupees ten lac only). The learned counsel for the respondent also contended, that the respondent has remarried in the year 1997 and, therefore, has other liabilities also. The appellant was said to be not entitled to grant of permanent alimony, specially for the reason that she made false allegation of impotency, which stands belied from the fact of remarriage of the respondenthusband. The contention of the learned counsel for the respondenthusband further was, that income tax return was the best piece of evidence, and if that is taken into consideration, the impugned judgment, granting permanent alimony @ Rs. 5,000/ (Rupees five thousand only), cannot be sustained.

31. Learned counsel for the respondent also referred to the crossexamination of the appellant to contend, that in crossexamination she has denied having seen

the papers with regard to 60 acres of land of HUF and the contention, therefore, was that the evidence was merely hearsay. Thus, by referring to the crossexamination, the learned counsel for the respondent stated, that the appellant has failed to prove the income of the respondenthusband to claim any maintenance under Section 25 of the Act. Finally, the contention of the learned counsel for the respondent was, that under Section 25 of the Act, the alimony can be granted on the basis of income of the husband, and once by way of income tax return, the income was proved on record, the judgment of the learned Additional District Judge deserves to be modified, to reduce the alimony rather than to enhance it.

32. It is settled law, that in estimating the amount of permanent alimony or permanent maintenance, the Court, while dealing with the fact of income, is not to focus its attention only on the disposable income of a spouse in the year of proceedings the making of the order, but would also normally have regard to the earnings in the previous years and probable earnings in the future. The Court is also to look into the position and the status of parties and in absence of any reliable data on the point of income, the Court is to take into consideration overall financial position of the spouses and their necessities having regards not merely to their income but their properties, debts and liabilities.

33. In view of the position of law referred to above and on consideration, I find force in the contentions raised by the learned senior counsel for the appellant. Sufficient documentary evidence was placed on record to show the status of the respondenthusband, as a big landlord. It was also proved on record, that the husband was employed as senior executive with M/s Kirloskar Qummins Ltd., Pune, and owned a flat in Pune, though there was dispute with regard to the fact whether it was with tenant or in selfoccupation. Once it is proved on record that even if conservative approach is adopted, the property of the respondenthusband cannot be said to be less than worth Rs. 12 crore, though it would be much more, as per evidence brought on record. The learned Court below, therefore, was not justified in fixing the income only at Rs. 5,000/ (Rupees five thousand only) per month. The respondent, as per his own admission, owned 5 acres of precious land at Jarar near Agra, the properties at Agra as well as agricultural land measuring 20 acres in Madhya Pradesh.

34. It is settled law, that the agricultural land is not taxable and, therefore, the income tax returns filed by the respondent cannot be said to be depicting actual income of the respondenthusband. For the reasons best known to him, the respondenthusband did not place on record the wealth tax return, and tried to evade answering question about the property owned by the family. It is not in dispute, that respondent is from wellknown jamidar family, which had income of Rs. 50,000/ (Rupees fifty thousand only) in the year 1942. The property record further shows that the respondent has number of properties, beside being capable of holding high position as per his qualifications.

35 Keeping in view the assets of the respondenthusband, his income cannot be

assessed less than Rs. 1.5 lac (Rupees one lac five thousand only) per month. The appellant, therefore, is entitled to Rs. 40,000/ (Rupees forty thousand only) per month along with right of residence as maintenance towards permanent alimony in the year of filing of the petition.

36. It is well settled that the wife besides maintenance is now also entitled to right of residence with the equal status as that of husband. Even a flat of two rooms is worth more than Rs. 80 lacs (Rupees Eighty lac only). However, the right of residence along with right to maintenance is assessed at Rs. 1,00,000,00/ (Rupees One crore only), if paid in lump sum.

37. For the reasons stated, this appeal is allowed, the permanent alimony payable is enhanced to Rs. 40,000/ (Rupees Forty thousand only) per month with right of residence or in the alternative a sum of Rs. 1,00,000,00/ (Rupees One crore only) as one time alimony which would not represent even 1/10th of the property owned by the respondent.

38. The appellant shall also be entitled to costs, which are assessed at Rs. 20,000/ (Rupees twenty thousand only).