

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 265 of 2012

Salima Mohanty, aged about 32 years,
W/o-Late S. Anil Kumar @ S. Anil Kumar Pattnaik,
D/o-Sukadev Mohanty ... Petitioner No.1

Subhransu Kumar Pattnaik, aged about 4 years,
S/o-Late S. Anil Kumar @ S. Anil Kumar Pattnaik,
represented through his mother guardian Salima Pattnaik
... Petitioner No. 2

Both are at residing at Plot No. 3450,
Uparsahi, Badagada, P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

... Versus...

S. Shyam Sundar Rao, aged about 58 years,
S/o-Late Surya Narayan @ Raman,
At present working as (M.C.M) Sr. Technician
Mill (Weight Section, Carriage Repair Workshop,
Mancheswar, Bhubaneswar-17
Permanent address;- Ramachandrapur,
Khasmal Colony, P.O./P.S.-Jatni,
Dist-Khurda.

... Respondent

Date of argument : 13.10.2014

Date of judgment : 14.10.2014

J U D G M E N T

This order arises out of a petition U/s. 19 of the Hindu Adoption and Maintenance Act, 1956 (in short, the Act 1956) filed by the petitioner No.1 Salima Mohanty and the petitioner No.2 Subhransu Kumar Pattnaik (minor) through mother guardian petitioner No.1 claiming monthly maintenance of

Rs. 10,000/- each for both of them from the respondent.

2. The fact of the case are as follows:-

The marriage of the petitioner with S. Anil Kumar alias S. Anil Kumar Patnaik son of the respondent was solemnized as per Hindu custom and rites on 25.02.2007 and out of their wedlock a male child namely Subhransu Kumar Pattnaik –petitioner No.2 was born. Petitioner No. 1 has averred that due to mental torture and her husband being deprived of his legal rights, her husband, son of the respondent committed suicide on 13.06.2012. Petitioner No.1 is the daughter-in-law and petitioner No. 2 is the grandson of the respondent. The petitioner No. 1 has averred that she has limited source of income to maintain herself and her child who is studying at St. Xavier International School, Satyanagar, Bhubaneswar in U.K.G. and his School fees and bus Fees is Rs. 3,000/- per month and also she is staying in a rented house at Bhubaneswar and they are presently depending upon her parents whereas the respondent is a Railway employee, working as Sr. Technician (Grade-I) Officer in the Mancheswar Railway Working shop and is drawing salary of Rs. 45,000/- per month and his wife, Laxmi Pattnaik (mother-in-law) of the petitioner No.1 is working as a teacher in Sishu Sikhya Niketan School at Jatni and is getting salary of Rs. 10,000/- per month. Since the respondent having sufficient means will-fully neglected and refused to maintain the petitioners, who are their daughter-in-law and grandson, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs. 10,000/- for self and Rs. 10,000/-for petitioner No.2 from the respondent.

3. The respondent enter contest the petition and filed his W.S. denying the allegations made in the petition. He denied that the petitioner No.1 is the legally wedded wife and petitioner No. 2 is the son of his deceased son. He further argued that the petitioner No.1 being a Nurse in Govt. Hospital i.e. Capital Hospital, Bhubaneswar has handsome income to support herself and petitioner No.2 and therefore, he is not liable to provide any maintenance to them. He has further pleaded that the petition in not maintainable and therefore liable is to be dismissed.

4. The following points are formulated to resolve the controversy:-

(1) Whether petitioner No.1 is the widow of S. Anil Kumar son of the respondent and petitioner No.2 is grandson of the respondent ?

(2) Whether the respondent has acquired any coparcenary property or is in possession of any self acquired property?

(3) Whether the respondent is liable to maintain the petitioners?

4. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and relied on some documents i.e. Ext. 1 Adhar Card of Salima Mohanty, Ext. 2 Voter Identity Card of Salima Mohanty, Ext. 3 is the Adhar Card of S. Anil Kumar Pattnaik, Ext. 4 is the Voter Identity Card of S. Anil Kumar Pattnaik, Ext. 5 is the Birth Certificate of Subhransu Kumar Pattnaik, Ext. 6,7, 8 are the Money receipts of St. Xavier International School, Ext. 9, 10 are the certificates of Sadasiva Anil Kumar along with his mark sheet, Ext. 11 is the affidavit, Ext. 12 is the affidavit of S. Anil Kumar and Ext. 12/1 is his signature, Ext. 13 is the affidavit of Salima Mohanty, Ext. 14 is the LIC Insurance Police Bond, Ext. 15 is the Bajaj Allianz Insurance Policy Bond, Ext. 16 is the posting order/engagement order of Salima Mohanty in NRHM at Capital Hospital, Bhubaneswar, Ext. 17 is the salary statement of the respondent for the months of July, August, 2012 obtained under R.T.I Act, Ext. 18 is the Voter Identity Card of the respondent Shyam Sundar Rao, Ext. 19 is the Death Certificate of S. Anil Kumar @ A. Anil Kumar Pattnaik, Ext. 20 is the certified copy of Inquest report of S. Anil Kumar Pattnaik and Ext. 21 is the certified copy of post mortem report of S. Anil Kumar Pattnaik @ Rao. The respondent did not choose to adduce any evidence either oral or documentary.

5. The petitioner No.1 in her affidavit evidence has stated that she married to S. Anil Kumar @ S. Anil Kumar Pattnaik, son of the respondent on 25.02.2007 and out of their wedlock Subhransu Kumar Pattnaik-petitioner No.2 was born. Petitioner has well proved that she is the widow of S. Anil Kumar and daughter-in-law of the respondent vide Ext. 1, Adhar Card of Salima Mohanty, 2-Voter Identity of Salima Mohanty and 5-Birth Certificate of Subharansu Kumar Pattnaik. It is also well proved that S. Anil Kumar died

on 13.6.2012. P.W.1 has further stated that after death of her husband, she is staying separately from the respondent and the respondent without any rhyme or reason has neglected to maintain them. Her aforesaid statement remains unchallenged. Thus, it can safely be concluded that the petitioner No.1 is the legally daughter-in-law and petitioner No. 2 is the grandson of the respondent.

6. Section 19 of the Act provides for the right of a widowed daughter-in-law to claim maintenance from her father-in-law. Section 19 reads as under:-

7. "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 co-parcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law."

8. In *Gurdip Kaur Vrs. Ghamand Singh Dewa Singh and Sachchanad Wadhvani Vrs. Smt. Nisha & Ors.* in the majority decision it was held that the term "coparcenary property" occurring in Section 19(2) of the Act means the property which consists of (1) ancestral property; or (2) joint acquisition; or (3) property thrown into the common stock; and (4) accretions to such property.

9. The law about the joint family and joint family property is well settled. A joint Hindu family consists of all persons lineally descended from a common

ancestor, and includes their wives and unmarried daughters. The joint and undivided family is the normal condition of Hindu Society. An Undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family, which does not own any property, may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation.

10. Possession of joint family property is not a necessary requisite for the constitution of a joint Hindu family. Hindus get a joint family status by birth and the joint family property is only an adjunct of the joint family (Mulla on Mitakshara Hindu Law, Para 212, 17th Edition).

11. Property according to the Hindu Law may be divided into two classes, namely, (1) joint family property; and (2) separate property. Joint family property may be divided according to the source from which it comes into (1) ancestral property and (2) separate property of coparcenars thrown into the common coparcenary stock.

12. Ancestral property is a species of coparcenary property. If a Hindu inherits property from his father, it becomes ancestral in his hands. And his sons, grandsons and great grandsons acquired an interest by birth in the coparcenary property. The ownership of the coparcenary property is in the whole body of coparcenary and enjoyment thereof is in common.

13. Property jointly acquired by the members of a joint family with the aid of ancestral property is joint family property and the properties jointly acquired by the members of a joint family without the aid of ancestral property may or may not be joint family property. Whether it is so or not is a question of fact in each case. The term "joint family property" is synonym with coparcenary property. Separate property includes self acquired property. (Mulla on Hindu Law, Para 220, 17th Edition).

14. Where the property has been acquired in business by persons constituting a joint Hindu family by their joint labours, the question whether the property so acquired is joint family property or whether it is merely the joint property of the joint acquirers will depend on the intention of the parties.

15. Whether the separate property of a member of a joint family is impressed with the character of joint family property or not, the legal position has been noticed in K.V. Narayanan Vs. K.V. Ranganadhan and others as under:-

"..... It is true that property separate or self-acquired of a member of a joint Hindu Family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with intention of abandoning his separate claim therein but the question whether a coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights such an intention cannot be inferred merely from the physical mixing of the property with his joint family or from the fact that other members of the family are allowed to use the property jointly with himself or that the income of the separate property is utilised out of generosity or kindness to support persons whom the holder is not bound to support or from the failure to maintain separate accounts for an act of generosity or kindness cannot ordinarily be regarded as an admission of a legal obligation. (See Venkata Reddi Vs. Lakshmama, and G. Narayana Raju Vs.G. Ghamaraju, ."

16. It is not case the petitioner No.1 nor there is anything on record to show that the respondent had inherited any ancestral property. There is also no evidence on record to show that the respondent has any self acquired property. What has been pleaded in the petition as well as stated in the evidence that the respondent is a Railway Employee and is getting salary of Rs. 45,000/- per month. Salary of a person, is the person as income of that

person. It is not the property. The right to claim maintenance from the father-in-law being conditional upon the father-in-law having in possession of coparcenary property out of which widow daughter-in-law has not obtained any share. Though under the Act, the right to claim maintenance by widowed daughter-in-law against her father-in-law is limited to the extent of coparcenary property in the hand of father-in-law, out of which widowed daughter-in-law has not taken any share but under the old Hindu Law, prevailing before the enactment of the Act, this right of maintenance to the widowed daughter-in-law against the self acquired property of her father-in-law, was available. Since the petitioner No.1 has singularly failed to prove that the respondent has acquired any ancestral property or is in possession of self acquired property and therefrom the petitioner No.1 is not entitled claim any maintenance from the respondent.

17. In case of petitioner No.2, no doubt, according to Section 21(iv) of the Act 1956, he is a dependant but his right to claim maintenance is conditional upon the grandfather inheriting estate of the deceased father. That being not the case here which has been dealt in herein before, the petitioner No.2 is also not entitled to claim any maintenance from the respondent. Accordingly, issue No. 2 and 3 are answered against petitioners and Hence, ordered;

O R D E R

The petition of the petitioners is dismissed on contest but without cost.

JUDGE, FAMILY COURT,
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Dictated, corrected by me and is pronounced on this the 14th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Salima Mohanty

Witnesses examined for the respondent:

None

List of documents by petitioner:

- Ext. 1 Adhar Card of Salima Mohanty
- Ext. 2 Voter Identity Card of Salima Mohanty
- Ext. 3 Adhar Card of S. Anil Kumar Pattnaik
- Ext. 4 Voter Identity Card of S. Anil Kumar Pattnaik
- Ext. 5 Birth Certificate of Subhransu Kumar Pattnaik
- Ext. 6,7&8 Money receipts of St. Xavier International School
- Ext. 9, 10 Certificates of Sadasiva Anil Kumar along with his mark sheet
- Ext. 11 Affidavit
- Ext. 12&12/1 Affidavit of S. Anil Kumar and his signature
- Ext. 13 Affidavit of Salima Mohanty
- Ext. 14 LIC Insurance Police Bond
- Ext. 15 Bajaj Allianz Insurance Policy Bond
- Ext. 16 Posting order/engagement order of Salima Mohanty in NRHM at Capital Hospital, Bhubaneswar
- Ext. 17 Salary statement of the respondent for the months of July, August, 2012 obtained under R.T.I Act
- Ext. 18 Voter Identity Card of the respondent-Shyam Sundar Rao
- Ext. 19 Death Certificate of S. Anil Kumar @ A. Anil Kumar Pattnaik
- Ext. 20 Certified copy of Inquest report of S. Anil Kumar Pattnaik
- Ext. 21 Certified copy of post mortem report of S. Anil Kumar Pattnaik @ Rao

List of documents by respondent:

Nil

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