

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE AMAR NATH (KESHARWANI)

FIRST APPEAL No. 1821 of 2022

BETWEEN:-

***RAM SHANKAR VISHWAKARMA S/O SHRI
KASHI RAM VISHWAKARMA, AGED ABOUT
78 YEARS, H.NO.313 RANIPUR SHUKLA
NAGAR MALI MOHALLA VEERSAVARKAR
WARD MADAN MAHAL JABALPUR (MADHYA
PRADESH)***

.....APPELLANT

(BY SHRI NITIN DUBEY - ADVOCATE)

AND

***1. SMT. RANI VISHWAKARMA W/O LATE
SHRI SUNIL VISHWAKARMA, AGED ABOUT
32 YEARS, C/O SHRI SURENDRA
VISHWAKARMA H.NO. 36 B IN FRONT OF
LAL BAHADUR SHASTRI SCHOOL NEAR
LALA CHOWK TRIMURTI NAGAR
GOHALPUR JABALPUR (MADHYA
PRADESH)***

***2. PARI VISHWAKARMA D/O LATE SHRI
SUNIL VISHWAKARMA, AGED ABOUT 9
YEARS, R/O C/O SHRI SURENDRA
VISHWAKARMA H.NO. 36 B IN FRONT OF***

**LAL BAHADUR SHASTRI SCHOOL NEAR
LALA CHOWK TRIMURTI NAGAR
GOHALPUR JABALPUR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI D.N. PANDEY - ADVOCATE)

Reserved on	:	26.04.2023
Delivered on	:	11.05.2023

*This appeal coming on for final hearing this day, **Justice Amar Nath (Kesharwani)** passed the following:*

ORDER

The appellant has filed this appeal under Section 19(1) of the Family Court Act, 1984 against the impugned order dated 05.09.2022 passed in Civil Suit No.346A/2016 by learned 1st Additional Principal Judge, Family Court, Jabalpur.

2. The relevant facts necessary for deciding this appeal are that applicants/respondents have filed an application under Section 19(1) read with Section 21(iii)(v) and Section 22 (i) sub-section (2) of Hindu Adoption and Maintenance Act, 1956 (*hereinafter referred to as the "Act of 1956"*) against the appellant who is the father-in-law of respondent No.1 and grand father of respondent No.2 on the ground that respondent No.1 was married to late Sunil Vishwakarma (son of appellant) and with the wedlock of Sunil Vishwakarma and respondent No.1, a child (respondent no.2) was born. Sunil Vishwakarma died on 30.11.2015, after

his death appellant has treated respondents with mental and physical cruelty and also expelled them from the house without giving any maintenance to her. It is also pleaded that respondents have no means to maintain herself and the appellant is a retired employee of Railways and getting pension of Rs.30,000/- (Thirty Thousand Rupees) monthly and he has also a rental income of approximately Rs.40,000/- (Forty Thousand Rupees) per month from the house and her mother-in-law is also getting an income of Rs.15000/- (Fifteen Thousand Rupees) per month from a grocery shop which was run by the husband of respondent No.1 in his life time. It is also pleaded that for expanding the business of the grocery shop, respondent No.1 has taken a loan from the bank. After the death of her husband that shop is now managed by the wife of appellant. Hence prays for maintenance from the appellant.

3. In reply, the appellant has denied the pleadings of the applicants/respondents and submits that respondent No.1 is not a legally wedded wife of late Sunil Vishwakarma and respondent No.1 has sufficient source to maintain herself and her minor child, hence prayed for dismissal of the application.

4. After taking the evidence of both the parties and considering the argument of the parties, the learned trial Court has passed the impugned order and awarded Rs.3000/- (Three Thousand Rupees) per month as maintenance for respondent No.2. Being aggrieved with the impugned order, this appeal has been filed before this Court.

5. Learned counsel for the appellant has submitted that the appellant has not inherited any property from the father of respondent No.2,

therefore, the appellant has no liability to maintain respondent No.2 and submits that the appellant is almost 78 years old a retired person and getting only Rs.15000/-(Fifteen Thousand Rupees) per month as a pension, and from this amount he has to take care of himself, his wife, family and grand child also. Therefore, he is not competent to comply with the order of the learned Family Court to pay the amount of Rs.3000/- (Three Thousand Rupees) per month to respondent No.2. It is also submitted that respondent No.1 is living separately since 2007 and was working in “Real India Mutual Benefit Corporation Limited” and is earning good amount and respondent No.1 is competent to maintain herself and respondent No.2.

6. Learned counsel for the appellant submits that as per Section 19 and Section 22(1) of the “Act of 1956”, no liability can be made out against the appellant. He further submits that the order passed by this Court on 02.08.2017 in C.R. No.92/2017 (**Annexure A/2**), respondents have not filed any documentary evidence as asked by this Court and learned trial court has also not complied with the above order while passing the impugned order. He also submitted that no property has been inherited by the appellant from the husband and father of respondent no.1 and 2 respectively. In this regard learned counsel of the appellant drew the attention of this court towards the statement of Rani Vishwakarma (PW-1) Para no.7 and 8 and submits that order passed by the Family Court is not according to law, hence prays to set aside the impugned order dated, 05.09.2022.

7. Learned counsel for the respondents submits that the order passed by the learned Family Court, Jabalpur is in accordance with law, facts and circumstances of the case, hence, prays for dismissal of the appeal.

8. We have considered the arguments advanced by the learned counsels for the parties and perused the record of the concerning Family Court.

9. Section 21 of the “Act of 1956” defines “dependents”, which is reproduced as under :

*“Section 21- **Dependents defined** - For the purposes of this Chapter “dependants” mean the following relatives of the deceased:—*

(i) his or her father;

(ii) his or her mother;

(iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of a predeceased son of his pre-deceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great-grandson, from the estate of his father or mother or father’s father or father’s mother;

*(v) his or her unmarried daughter, **or the unmarried daughter of his predeceased son** or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father’s or mother’s estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father’s mother;*

(vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance—

- (a) from the estate of her husband; or
- (b) from her son or daughter if any, or his or her estate; or
- (c) from her father-in-law or his father or the estate of either of them;
- (vii) any widow of his son or of a son of his predeceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- (viii) his or her minor illegitimate son, so long as he remains a minor;
- (ix) his or her illegitimate daughter, so long as she remains unmarried.

10. Section 22 of the "Act of 1956" deals with the maintenance to the dependents which is reproduced as below :

"22. Maintenance of dependants.—(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

11. Applicant No.1/respondent No.1 has examined herself as AW-1 and no other witnesses were examined in support of her pleadings. Appellant/non-applicant has not entered in the witness box to support his pleadings but the wife of the appellant was examined as NA.W-1. No documents have been filed by the respondents/applicants regarding the loan taken by the respondent No.1 from the bank for the expansion of the grocery store of her husband and the documents regarding the ownership of the said shop have also not been filed by the respondents. Documents showing that after the death of deceased, grocery shop was run by the wife of the appellant has also not been placed on record. Respondents/applicants have not filed any documentary evidence which proves that appellant/non-applicant has inherited any property from the husband of respondent No.1/father of respondent No.2. It is also not proved that appellant has received a rental income from ancestral property. Hence it is not proved that the appellant has inherited any property from deceased Sunil Vishwakarma (father of respondent no.2). Hence, Section 22(1) of the “Act of 1956” is not complied with and therefore the respondent no.2 is not entitled to get any maintenance from appellant under provisions of “Hindu Adoption and Maintenance Act, 1956”.

12. Resultantly, the appeal is allowed and the impugned order dated, 05.09.2022 passed in Civil Suit No.346A/2016 by learned 1st Additional Principal Judge, Family Court, Jabalpur is hereby set-aside.

**(SUJOY PAUL)
JUDGE**

**(AMAR NATH (KESHARWANI))
JUDGE**

anand