

Before S. S. Sodhi, J.

GURDEV KAUR AND OTHERS,—Appellants

versus

MST. CHANNO,—Respondent.

First Appeal From Order No. 225-M of 1984

September 3, 1985

Hindu Marriage Act (XXV of 1955)—Section 25—Hindu Adoption and Maintenance Act (32 of 1956)—Sections 21 and 22—Marriage dissolved between husband and wife—Order for payment of alimony passed against the husband—Wife claiming enhancement of the amount after the death of the husband—Alimony granted to the wife—Whether comes to an end with the death of the husband—Remedy of the widow where the husband has died.

Held, that payment of alimony is, by its very nature, a personal obligation and this being so, it must inevitably come to an end with the deceased husband no longer being there to fulfill it. Further, it is equally clear that the amount payable as alimony does not *ipso facto* become a charge on the respondent's property. A plain reading of section 25 of the Hindu Marriage Act, 1955 would show that such a charge can be created only by a specific order to that effect in terms of the provisions thereof. In other words, the section contains an enabling provision regarding creation of a charge on the immovable property of the respondent to secure the payment of alimony, but it nowhere lays down that such a charge shall be inherent in an order awarding alimony. Alimony, being at any rate a right enforceable against the husband *in personam*, it must be deemed to have ceased with the death of the husband.

(Para 5).

Held, that death of the husband against whom an order for payment of alimony has been made does not mean that the widow is left without remedy. Relief is indeed available to her but not under the Hindu Marriage Act, 1955. It is the provisions of the Hindu Adoptions and Maintenance Act, 1956, that then come into play. The widow being one of the dependents, as defined under Section 21 thereof, would be entitled to the benefit of the obligation imposed upon the heirs of the deceased-husband under section 22 of the said Act to maintain her out of the estate of the deceased inherited by them.

(Para 6).

Gurdev Kaur and others v. Mst. Channo (S. S. Sodhi, J.)

First Appeal from the order of the Court of Mrs. Bakhshish Kaur, Additional District Judge, Kapurthala, dated the 30th day of August, 1984 accepting the application and allowing the applicant is enhanced maintenance at the rate of Rs. 200 per month. The payment of maintenance is secured by creating a charge on the immoveable property of Lachhman Dass which is in the hands of the respondents.

Surjit Singh, Advocate, for the Appellant.

Amarjit Markan, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J..

(1) Does alimony granted to the wife under Section 25 of the Hindu Marriage Act, 1956 come to an end with the death of the husband ? Herein lies the controversy in appeal.

(2) In August, 1967, when the marriage between Channo and her husband Lachhman Das was dissolved by a decree for divorce, the court awarded Rs. 75 per month as alimony to Channo under Section 25 of the Hindu Marriage Act, 1956 (hereinafter referred to as 'the Act'). This was later enhanced, on her application, to Rs. 150 per month with effect from November 22, 1978.

(3) Sometime after his marriage with Channo had been dissolved, Lachhman Das contracted a second marriage with Gurdev Kaur. Lachhman Das died on December 19, 1980 leaving behind his widow Gurdev Kaur, their two sons and a daughter.

(4) On March 9, 1983, that is, after the death of Lachhman Das, Channo filed an application under Section 25 of the Act seeking further enhancement of the alimony awarded to her. The challenge in appeal here is to the impugned order of the trial court enhancing alimony to Rs. 200 per month. Payment of this amount was ordered to be secured by a charge being created on the immovable property of the husband Lachhman Das in the hands of his second wife—Gurdev Kaur and her children.

(5) Payment of alimony is, by its very nature, a personal obligation and this being so, it must inevitably come to an end with the deceased husband no longer being there to fulfill it. Further, it is equally clear that the amount payable as alimony does not ipso

facto become a charge on the respondent's property. A plain reading of section 25 of the Act would show that such a charge can be created only by a specific order to that effect in terms of the provisions, thereof. In other words, the section contains an enabling provision regarding creation of a charge on the immoveable property of the respondent to secure the payment of alimony, but it nowhere lays down that such a charge shall be inherent in an order awarding alimony. Admittedly, no such order had been passed in the present case. Alimony, being at any rate a right enforceable against the husband *in personam*, it must be deemed to have ceased with the death of the husband—Lachhman Das.

(6) The death of the husband against whom an order for payment of alimony has been made does not mean that the widow is left without remedy. Relief is indeed available to her but not under the Hindu Marriage Act, 1956. It is the provisions of the Hindu Adoptions and Maintenance Act, 1956, that then come into play, The widow being one of the dependants, as defined under Section 21 thereof, would be entitled to the benefit of the obligation imposed upon the heirs of the deceased-husband under Section 22 of the said Act to maintain her out of the estate of the deceased inherited by them.

(7) In the situation as has arisen in the present case, keeping in view the larger interests of justice, the trial court is directed to treat the application of Mst. Channo for enhanced alimony as one under the relevant provisions of the Hindu Adoptions and Maintenance Act, 1956, and to consider her claim for maintenance in terms of that law. For this purpose, it shall be open to Mst. Channo to amend her application and to lead such further evidence as she may deem appropriate. The evidence already on record shall be treated as evidence recorded in the proceedings under the Hindu Adoptions and Maintenance Act, 1956. Further, pending the decision of the trial court in this matter, Mst. Channo shall continue to be entitled to receive Rs. 150 per month as maintenance out of the estate of her deceased-husband in the hands of Gurdev Kaur and her children.

(8) This appeal is accordingly accepted in terms as set out. There will, however, be no order as to costs. The parties are directed to appear before the trial Court on September 23, 1985.

N. K. S.