

**IN THE COURT OF AD-HOC DISTRICT JUDGE-1,  
SANGAMNER, DIST. AHMEDNAGAR.**

Regular Civil Appeal No. 105/2012

Thakubai Rajaram Chaudhari .. **Appellant** .

**Versus**

Sahadeo Kondaji Chaudhari and others, .. **Respondents.**

Appearance-

Mr. J. H. Waman , the learned advocate for the appellant.

Mr. N. A. Jorvekar, the learned advocate for respondents.

**- ORDER BELOW EXH. 7-**

1. This is an application taken out by appellant/ original plaintiff to direct respondents/ defendants to pay maintenance at the rate of Rs. 3000/- per month till final decision of the appeal.
2. The appellant is original plaintiff and respondents are original defendants in the above numbered suit.
3. For the sake of convenience, parties will be referred to by their respective nomenclature in the suit i. e. " the plaintiff " and "defendants."

**Brief Facts :-**

4. The appellant/ plaintiff had filed suit for partition and separate possession in respect of bunch of properties mentioned in

plaint paragraph Nos. 1 A to 1 F. The basis of the suit is that suit properties are ancestral and joint family properties. The plaintiff being widow of one of the co-parcener entitled for partition and separate possession.

5. The learned trial Judge during pendency of the suit granted interim maintenance in favour of the plaintiff. However, after entire evidence by both the parties the learned trial Judge pleased to hold that plaintiff has failed to prove that properties are ancestral and consequently entitled for 1/2 share. Accordingly, the suit came to be decreed partly by holding that though the plaintiff is not entitled for partition and separate possession, she is in possession of 49 R land in Survey No. 51 /2 and 51/4.

6. Aggrieved by the impugned Judgment and decree dated 28.02.2012 the appellant/ plaintiff has preferred this appeal.

7. By way of present application, it is contended that the suit properties are in possession of respondents. The appellant is not in possession of any property. She has no source of income. Therefore, she is unable to maintain herself. Therefore, an interim maintenance at the rate of Rs. 3000/- per month may be granted.

8. Respondents/ defendants vide say ( Exh.20) strongly resisted the application on the ground that the claim of plaintiff for partition and separate possession came to be rejected. The interim order of maintenance during pendency of the suit has been vacated. The appellant is having land bearing Survey No. 51/2 and

51/4. She has source of income. Therefore, application may be rejected.

9. Heard the learned advocates for both the parties at length.

10. The points arise for determination along with findings and reasons thereon are as under :

<b>Sr. No.</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Whether the appellant has made out case to grant interim maintenance ? ..	No
2	What order ?	.. The application is rejected.

### **REASONS**

#### **As to point No. 1 :-**

11. Having considered the limited issue, I have perused the impugned Judgment and decree coupled with plaint. It is specific case of the appellant that suit properties are ancestral and joint family properties and in possession of respondents. She being widow of deceased co-parcener namely Rajaram, entitled for partition and separate possession. The learned trial Court has specifically recorded finding that the suit properties are not ancestral properties and consequently the plaintiff is not entitled for share therein.

12. The principal question in the appeal for adjudication is whether the suit properties are ancestral and consequently the plaintiff is entitled for share therein as sought. This question will be decided and adjudicated only on the merit.

13. Now, the contention of the appellant is that respondents being in possession of all properties, they may be directed to pay Rs. 3000/- per month by way of maintenance.

14. It is settled legal position that in order to claim maintenance during pendency of the appeal the appellant ought to have established that she is unable to maintain herself. She has no source. She is unable to maintain herself out of her earning or other property. She has also been unable to obtain maintenance from her son or daughter or from their estate.

15. Having regard to this legal position, let us have a quick reference to impugned Judgment. The learned trial Judge has categorically recorded the finding that the plaintiff is in possession of 26 R + 1 R pot kharaba land in Survey No. 51/2 and 22 R land in Survey No. 51/4. In paragraph, No. 8 the learned trial Judge has categorically held that the appellant is owner and in possession of lands as mentioned above. As per observations in the Judgment, the revenue record also indicates same position and shows possession of the appellant over above mentioned properties.

16. The net result is that the plaintiff is in possession of 49 R land in Survey No. 51/2 and 51/4. This land is more than 1 acre.

The appellant has no contention that this land is either barren land or non cultivating land. She has no contention that despite this land she is unable to maintain herself. The learned trial Court had granted interim maintenance on the assumption that no land in possession of the appellant. However, now it is established that she is in possession of 49 R land.

17. Thus, once it is established that the appellant is having independent source of income and there is no contention that same is not sufficient, then there is no need to grant maintenance during pendency of the appeal. In turn, I answer point No. 1 in the negative and I pass the following order to answer point No.2.

**ORDER**

- 1 The application ( Exh. 7) is rejected.
- 2 Cost in cause.

Date:- 02.08.2017  
Sangamner.

( H. M. Bhosale)  
Ad-hoc District Judge-1,  
Sangamner