

Order below Exh.5 in Regular Civil Suit No.03/2021.
(CNR No. : MHDH06-000049-2021)

This suit is filed by the plaintiffs for partition, separate possession and maintenance in respect of the suit properties mentioned in paragraph No. 2 of the plaint. Plaintiffs have also claimed relief of maintenance. The present application Exh.5 is filed by the plaintiffs for interim maintenance from defendant No.1 and 3.

2) The contentions of the plaintiffs is that, the suit properties are ancestral and joint family properties of plaintiffs and defendants. Defendant No.1 is father-in-law of plaintiff No.1 and grandfather of plaintiff No.2 and 3. Defendant No.2 is mother-in-law of plaintiff No.1 and grandmother of plaintiff No.2 and 3. Defendant No.1 and 2 have two sons and two daughters namely, Dnyaneshwar (husband of plaintiff No.1), Dinesh (defendant No.3), Sushma (defendant No.4) and Rekhabei (defendant No.5). Out of them, Dnyaneshwar died on 16/08/2020. Plaintiff No.1 is widow, plaintiff No.2 is son and plaintiff No.3 is daughter of deceased Dnyaneshwar. The suit properties mentioned in paragraph 2 of the plaint are ancestral and joint family properties of plaintiffs and defendants. The suit properties are not yet partitioned between plaintiffs and defendants. Defendant No.4 and 5 are married and resides at their matrimonial house. Deceased Dnyaneshwar had 1/3 share in the suit properties and now plaintiffs are entitled to said share of deceased Dnyaneshwar being widow, son and daughter of deceased Dnyaneshwar. After demise of Dnyaneshwar, plaintiff No.1 was residing with defendant No.1 to 5 in joint family. They have physically and mentally tortured her. They have stated that deceased Dnyaneshwar died because of her. Thereafter, they have driven out

plaintiff No.1 from their house at 11.00 p.m.. Therefore, she is compelled to reside with her father's house. Thereafter, on 20/11/2020 she went to house of defendant No.1 to 3 and demanded share in the suit properties. However, defendant No.1 to 3 have refused to give share of the plaintiffs. Therefore, plaintiffs constrained to file present suit for partition. Plaintiff No.2 and 3 are minor and they have taking education. Defendant No.1 and 3 are getting income from said ancestral and joint family properties and therefore, they are getting handsome income. Plaintiff No.1 has no income source to maintain herself and plaintiff No.2 and 3. They have undivided share in the suit properties. Therefore, defendants are entitled to give interim maintenance to them. Therefore, they have prayed for interim maintenance of Rs.5,000/- each from defendants No.1 and 3.

3) Defendants have filed their written statement and say to this application at Exh.23. They have denied all adverse contentions of the plaintiffs. They have admitted the relationship with plaintiffs. They have denied that plaintiffs have share in the suit properties. They have also denied that the suit properties are ancestral and joint family properties of plaintiffs and defendants. They have contended that, plaintiff No. 1 and deceased Dnyaneshwar were residing separately during lifetime of deceased Dnyaneshwar, therefore, plaintiff No.1 never resided in joint family of defendants. Defendant No.3 also resides separately from defendant No.1. Deceased Dnyaneshwar had vehicles and from which he was getting income. After death of Dnyaneshwar the said vehicles taken by plaintiff No.1 and with assistance of driver she is also getting income from said vehicles. Defendant No.1 is old aged and he is not doing any work.

There was not sufficient income from agricultural suit properties. Therefore, defendant No.1 to 3 went to Navsari (Gujrat State) for work. Therefore, there is no income from agricultural suit properties. The house suit property is self acquired property of defendant No.2. Suit properties are not ancestral and joint family properties, therefore, plaintiffs have no share in the suit properties. Therefore, they are unable to provide maintenance as claimed by the plaintiffs. Lastly they have prayed for rejection of the application filed by plaintiffs for grant of interim maintenance.

4) For my determination following points arise and I have recorded my finding thereon as under.

<u>Points</u>	<u>Findings</u>
1) Whether plaintiffs are entitled to interim maintenance as prayed ? If yes, what is the amount of maintenance ?	... Partly in the affirmative.
2) What order?	Application is partly allowed.

-: REASONS :-

As to Point Nos. 1 and 2 :-

5) Perused the application and say filed by the defendants. Heard Ld. Advocate Mr. B.Z. Marathe for the plaintiffs and Ld. Advocate Mr. A.H. Gujrathi for defendants. According to the plaintiffs, the suit properties are ancestral and joint family properties of the plaintiffs and defendants. They have share in the suit properties. They have demanded their shares from the defendants but they have denied to give their shares. The ancestral and joint

family properties are in possession of defendants and, therefore, defendant No. 1 and 3 are liable to pay interim maintenance.

6) Defendants have denied that the suit properties are ancestral and joint family properties. They have further contended that the house suit property is separate property of defendant No.2. Plaintiffs have not filed documentary evidence on record to show that the above mentioned suit properties are joint family properties of the plaintiffs and defendants. They have further contended that deceased Dnyaneshwar was residing separately from defendant No.1 and 2 along with plaintiffs. Defendant No.3 is also residing separately. Deceased Dnyaneshwar had vehicles and from which he was getting income. Now, the said vehicles are with plaintiff No.1 and she is getting income from it with assistance of driver. Plaintiffs have no share in the suit property.

7) Admittedly, deceased Dnyaneshwar was husband of plaintiff No. 1 and father of plaintiff No.2 and 3. Deceased Dnyaneshwar was one of the coparceners being son of defendant No. 1 and 2. Defendant No. 1 is father-in-law and defendant No.2 is mother-in-law of plaintiff No.1. As per section 19 of Hindu Adoption and Maintenance Act, a Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law to the extent that she is unable to maintain herself out of her own earnings or other property and where she has no property of her own. There is no *prima-facie* evidence on record to show that plaintiff No. 1 has source of income. As per section 19 of Hindu Adoption and Maintenance Act, father-in-law is liable to maintain plaintiff No.1.

8) Now, question remains for discussion is whether defendant No.3 is liable to pay maintenance to plaintiff No.1 or not.

Under section 21 of Hindu Adoption and Maintenance Act, the definition of 'dependant' is provided. As per this section for the purpose of this chapter dependants means the following relatives of the deceased –

- (i) *his or his father;*
- (ii) *his or her mother;*
- (iii) *his widow, so long as she does not remarry;*
- (iv) *his or her son or the son of his predeceased son or the son of a pre-deceased son of his predeceased son, so long as he is a minor;*
- (v) *his or her unmarried daughter, or the unmarried daughter of his pre-deceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried;*

9) This chapter related to maintenance. For the purpose of this chapter the term 'dependent' defined under section 21 of the Hindu Adoption and Maintenance Act. Being widow, son and daughter of deceased Dnyaneshwar, plaintiffs are clearly comes within the purview of term 'dependants'.

10) The provisions for maintenance of dependants provided under section 22 of Hindu Adoption and Maintenance Act. Section 22 provides that –

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.*

11) As per this provision the heirs of deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from deceased. It means, the dependant can be maintained out of the estate inherited by heirs of deceased.

12) From plainly going through the said provisions it appears that when the other heirs who inherited the property of a deceased Hindu are liable to maintain the dependants of said deceased Hindu. In the present case being widow, son and daughter plaintiffs are dependants of deceased Dnyaneshwar within the ambit of section 21 of Hindu Adoption and Maintenance Act. Plaintiffs have filed mutation entry No.6905 on record which shows that suit properties gat No.368, 378/1, 380/1, 399 were given in the share of defendant No.1 in partition, therefore, it appears that the said suit properties are ancestral properties of plaintiffs and defendants, which are in possession of defendant No.1 to 3 in which deceased Dnyaneshwar had undivided share.

13) It is observed by Hon'ble Bombay High Court in case of **Smt. Janabai Ramchandra Barge** V/s. **Mr. Mahadeo Manyaba Barge** since deceased through L.Rs. And others reported in 2006(2) BCJ 528, in paragraph No. 6 that,

Needless to say that as against the defendant No. 1 and 3 the order of maintenance can be passed since they are in possession of the joint family properties and the plaintiff-petitioner being the wife of one of the coparcener who died in 1979 was entitled to have a right of maintenance when the said properties are in possession of the father-in-law and other coparceners.

14) In the present case in hand plaintiffs have *prima-facie* shown that the agricultural suit properties are ancestral and joint family property of plaintiffs and defendants. The defendant No.1 and 3 are coparceners of joint family of the plaintiffs and defendants and the said suit properties are in their possession. Therefore, in view of

aforesaid legal discussion and in view of aforesaid judgements of Hon'ble Bombay High Court, I am of the view that, plaintiffs are entitled to interim maintenance from defendant No.1 and 3 who are coparceners and who inherited the property of deceased Dnyaneshwar.

15) According to the plaintiffs, the suit properties are irrigated properties and defendant No.1 and 3 are getting yearly income of Rs.6 Lacs from the suit properties. However, no specific evidence brought on record about the income of the defendant No.1 and 3. However, on perusal of 7/12 extracts of the suit properties gat No.368, 378/1, 380/1, 399, it appears that, the crops of Cotton, Sugar cane are taken from the agricultural suit properties. Therefore, it appears that definitely certain income gets by the defendant No.1 and 3 from the said properties. Considering these facts and requirements of the plaintiffs, it appears that the plaintiff No.1 is entitled to interim maintenance of Rs.1,000/- and plaintiff No.2 and 3 are entitled to interim maintenance of Rs.500/- each from defendant No.1 and 3 jointly. Hence, I have answered point No. 1 in the partly affirmative and in view of point No. 2 I proceed to pass the following order.

ORDER

- 1) Application Exh.5 is partly allowed as follows.
- 2) Defendant No. 1 and 3 shall jointly pay interim maintenance of Rs.1,000/- to plaintiff No.1 and Rs.500/- each to plaintiff No.2 and 3 from this order till final decision of the suit.
- 3) Cost in main cause.

Sd/-xxx

(S. L. Vaidya)

Civil Judge (J.D.), Shindkheda

Date : 16/08/2021.

CERTIFICATE

I certify that the contents of this PDF file are word to word as per Original Order.

Name of the Steno : N. C. More,

Name of the Court : Civil Court J. D., Shindkheda,
Dist. Dhule.

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Sd/-xxx
Stenographer (Gr.III)