

MHKO070006582016



ORDER PASSED BELOW EXH.30

1] This application is filed by plaintiff No.1 praying therein give directions to defendant Nos. 2 and 4 give Rs. 25,000/- per month as interim maintenance to her.

2] Fact of the application is as under -

This suit is filed by the plaintiff for partition and separate possession of share of the plaintiffs from the agricultural land out of Block No. 398 area admeasuring 4 H. situated at village Nrusinhawadi, Tal. Shirol. According to plaintiffs, plaintiff No.1 has 4/6th share in the suit property. Defendants No.1 to 5 have filed W.S. at Exh.17 and denied suit of the plaintiff. Suit property is owned by Gopal Swami Trust and it was being cultivated by the father-in-law of plaintiff No.1 namely Krushnaji Vasudev Pujari as a tenant in this property. Krushnaji died on 28/12/2014 and since then defendant No.2 and 4 are cultivating suit property. Since 2014 crop of sugarcane out of suit property is being sent to sugar factory for crushing in the name of defendant No. 2 and 4. Approximately 700 Ton sugarcane is sent to sugar factory per year and thus defendant No.2 and 4 have received Rs. 80 lac income from this land. Plaintiffs have also right and interest in the suit property. Plaintiff No.1 is old aged and she has

no any source of income. Hence, she has prayed to give maintenance to her from defendant Nos. 2 and 4.

3] Defendant Nos. 2 and 4 filed their say and opposed to allow this application contending that, plaintiff has no right to claim maintenance. There is no any provision in law giving maintenance in suit for partition. Plaintiff has filed 7/12 extract of Block No. 398A and suit property is shown as a land Block No. 398, on that ground plaintiff is not entitled to relief of maintenance. They further stated that plaintiff is not entitled to the relief of partition and separate possession since defendant No. 2 and 4 have not taken possession of this property as a legal heirs of Krushnaji Pujari. Provisions of Bombay Agricultural Tenancy Act are not applicable to the suit property. Besides that, plaintiff No.1 earns Rs. 7,000/- to 8,000/- per month as a 'Anganwadi Sevika'. On the contrary defendants do not get Rs. 20 lac per year from the suit property. Out of land Gat No. 398A, 2 Acre land is a flood affected and same is reserved for Kanyagat Mahaparvkal. As such total 9 Acre land is in possession of Nrusinh Saraswati Datta Dev Sansthan. 69 R. land is in possession of Radha Bandu Pujari and 4 Acre land is given to Narayan Krushnaji Pujari for cultivation. This property is separate property of Narayan Pujari i.e. defendant No.4. Hence, he prayed for rejection of this application.

4] Heard both side gone through record. According to defendants, suit property is not 4 Hector but is not 4 Acre. It is

further contention of defendant that, it is not property of tenant but it is separate property of defendant No.4 Narayan Pujari. Plaintiff has filed on record 7/12 extract of suit property, which shows that land Block No. 398A is a H.5.77R. Owner of the said land is shown in 7/12 extract is Gopal Swami Vahivatdar Trust while Shri. Krushnaji Pujari is the protected tenant of the suit property. Thus from perusal of 7/12 extract it clearly appears that, Krushnaji Pujari was the protected tenant of the suit property. There is nothing to show that, suit properties are given by concerned trust to defendant No.4 in his independent rights. Therefore prima facie appears that, Krushnaji Pujari was the protected tenant in the suit property and after his demise defendant No.2 and 4 are cultivating this property as his legal heirs. Therefore, whatever right possessed by Krushnaji, those rights are forwarded to his legal heirs. Plaintiff No.1 being daughter-in-law of Krushnaji, she has also rights and interest in the suit property. Thus, prima facie it appears that, plaintiff has some right and interest in the suit property.

5] Now question arise whether in a suit for maintenance interim maintenance can be granted. In this regard learned Advocate for plaintiff has relied upon judgment passed by Hon'ble Bombay High Court in the case of **Sushilabai Chhotelal Gupta V/s. Ramgharan Hanumanprasad Vaishya and another, 1976 BCI 9** wherein Hon'ble High Court has observed as under.

"Therefore, the question which is required to be decided in these revision petitions is limited one. I am only concerned with the question, as to whether in such a suit, where the plaintiff is

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able to make out prima facie case for claiming a partition and separate possession in the joint Hindu family, can the plaintiff claim interim maintenance during the pendency of the suit. It is no doubt true that there is no specific provision in this behalf in the Code of Civil Procedure. But in my opinion, such a claim can be made by the parties by taking recourse to the provisions of section 151 of the Code of Civil Procedure. As to what is the true nature of scope of section 151 of the Code of Civil Procedure has been considered by the Supreme Court in (Manoharlal Chopra V. Rai Bahadur Rao Raja Seth Hiralal)¹, A.I.R. 1962 S.C. 527. In this context it was held by the Supreme Court.

It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. Further when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code.

Therefore, if the Court found that in the interest of justice it is necessary to grant such an interim maintenance, in my opinion, a Civil Court has ample power to pass such an order under its inherent powers conferred upon the Court under section 151 of the Code of Civil Procedure. Such a view seems to have been taken by the Madras High Court in (Subbaya Manivagarar V. Kandaswami)², A.I.R. 1935 Mad. 105.”

So far as Sushilabai is concerned, it is contended by defendant No.1 in his counter affidavit that she is carrying on a Rickshaw business through her servants and, therefore, she is not in the need of any amount for maintenance. However, it is contended by Sushilabai in her affidavit that she has no independent source of livelihood. Therefore, accepting her word prima facie at this stage, in my opinion, ends of justice will be met if defendant No.1 directed to pay an amount of Rs. 150 per month to plaintiff Sushilabai as ad-interim maintenance during the pendency of the partition suit.

6] Thus from perusal of ration laid down by Hon'ble Bombay High Court in aforesaid ruling it becomes clear that, in suit for partition interim maintenance can be granted. So far as case at hand is concerned, I have already held that, there is prima facie case in favour of plaintiff to show that she has entitled to the relief of partition and separate possession. It has come on record that, suit property is irrigated land and sugarcane is sent to Datta Sahakari Sakhar Karkhana, Shirol. Plaintiff has filed on record concerned record of the sugar factory to show that, from 2015 to 2019 sugarcane from suit property is sent to sugar factory. Record shows that, in the year 2015-16 total 357.539 tonnage sugarcane was sent in the name of defendant No.2 from Block No. 398 and he received an amount of Rs. 9,05,647/- against sugarcane. In the year 2016-17 he received an amount of Rs. 3,48,864/-, in the year 2017-18 an amount of Rs. 7,50,884/- and in the year 2018-19 an amount of Rs. 11,04,026/-.

7] Thus, prima facie it appears that, defendant No.4 is earning handsome amount from the suit property. So also prima facie it appears that, plaintiff No.1 is a old aged lady and she has no sufficient income to maintain herself. Therefore, she has right to receive maintenance out of suit property from defendant No.2 and 4. Therefore, plaintiff is entitled to the relief of interim maintenance as prayed. Age of plaintiff is now more than 70 years. Considering expenses of medicines and other increasing prices of essential commodities I am of the view that, an amount

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of Rs. 4,000/- per month as a interim maintenance would be sufficient to meet the ends of justice. Hence, I proceed to pass following order.

ORDER

Defendant Nos. 2 and 4 shall pay jointly Rs. 4,000/- (Rs. Fourt thousand only) per month as a interim maintenance to the plaintiff No.1 from the date of filing of this application.

Jaysingpur.
Dt.: 11.09.2019.

(K.G.Sawant)
Civil Judge Senior Division,
Jaysingpur.