

ORDER BELOW EX. 18
IN REGULAR DARKHAST NO. - 104/2018.

01. The Decree Holder has filed this application under Order XXI, Rule 46 of the Civil Procedure Code. Ld. Counsel for D. H. submitted that, D. H. No. 1 married with Judgment Debtor Mahesh Navale on 08.02.2011 and from the that wedlock they conceived child namely Prasad on 08.09.2012. The parents of J.D. ill-treated D. H. mentally and physically and on that count D. H. had filed HMP petition No. 251/2016 for divorce in Barshi Court and further claimed maintenance in it. Said petition was decided on 27.06.2018 and from the date of main petition Rs. 6000/- permanent alimony to D. H. No. 1 and Rs. 3000/- alimony to D.H. 2 was granted. Appeal against said order has not been filed, therefore, it is binding on the J.D. and D.H. However D.H. has not filed any application towards arrears of maintenance amount. Due to hike in prices, it is difficult for DH to complete the education of Prasad. Therefore, it is binding duty of the JD to deposit the amount of maintenance arrears.

02. J. D. is having ancestral property at Sangola bearing Gat No. 451/2/E. Government has acquired that property for the Sangali – Solapur highway and Govt. going disburse the compensation amount to the father of JD i.e. Sukdeo Navale. Prasad, son of DH is having birth rights in that property. Therefore, that amount needs to be attached. On 23.07.2019 DH demanded information from SDO, Mangalvedha,

but they have not provided information and JD and his father going to dispose of the amount which were begotten by them by way of compensation of acquisition. Further they submitted that, after filing application towards SDO, Mangalvedha, JD and his relatives came towards DH for compromise and offered her 10 to 12 lakh rupees. But DH demanded Rs. 25 lakh. Therefore, compromise did not work out. So by way of this application DH wants to attach the compensation amount of acquisition under the provision of O. XXI R. 46 of the CPC. They further submitted that, SDO, Mangalvedha and Sukdeo are the Garnishee to satisfy the arrears of maintenance and the rights of Prasad by birth in ancestral property that needs to be attached.

03. In support of their contention they filed on record the documents and the notices which were given by them to JD and SDO. Further they produced on record Ferfar No. 22285 and according to them it shows that, the property which is mentioned in the application is begotten by Sukdeo as ancestral property. They also submitted their written argument on that point. In it they have submitted that, they filed application towards SDO, Mangalvedha stating that no amount is to be paid and called on SDO being Garnishee to deposit said award amount in this Court, till claims and rights are settled. They also produced notices on record. Further they submitted that Sukdeo Navale appeared and raised objection and submitted that, Gat No. 451/2/E is his sole and separate land. Therefore, this DH submitted

that, land being Hindu joint family property, Prasad is sharer in it. Therefore, issue be framed and then the present application be decided.

04. Their whole reliance in the written argument seems that, as per sec. 47 of CPC this issue has to be decided by this Court in regard with the rights and interest of the Prasad for ancestral property. Further they submitted that, this Court is having jurisdiction to try such issue. They placed reliance on the authority of **Mohit Bhargava Vs. Bharat Bhargava & Ors. 2007 AIR (SC) 1717**. Further they placed reliance on the case of **Santa Sharma Vs. Sushil Sharma** and **Thrity Hoshie Dolikuka Vs. Hoshima Shavaksha Dolikuka** and further they relied on the authority of **Rosy Jacob Vs. Jacob A. Chakramakkal**. These two authorities are in respect of custody of child. Therefore, he submitted that, application be allowed and compensation amount be attached and rights and interest of the Prasad be decided.

05. On that appliation notice was issued to other party and SDO Mangalvedha on 01.10.2019. Sukeo Navale appeared in the matter and filed his say on 05.10.2019. In it he submitted that, in HMP No. 251/2016 he was not party and therefore that maintenance amount cannot be recovered from his separate property. DH has not filed any suit for partition and the property which is acquired is not declared as ancestral or joint Hindu family property and in absence of order of any

competent Court in that respect present application is not maintainable. All the contents in the application of DH are false and fabricated one. Further he submitted that, present Court has not having jurisdiction to try this application, as property which DH prayed to attach situated in Sangola Courts jurisdiction and the amount of the acquisition is demanded to be attached from SDO, Mangalvedha, these both do not come under the jurisdiction of present Court. Therefore, he submitted that, present application is not tenable and Sukdeo Navale or the SDO are not Garnishee. Therefore, procedure under O. XXI R. 46 of CPC could not be initiated against them. Further Ld. Counsel for Sukdeo Navale submitted that, Sukdeo is not shown as party in the Darkhast. Further more his name is not mentioned below application Ex. 18. Therefore, he submitted that, application be rejected.

06. SDO Mangalvedha filed their say below Ex. 35 and submitted that, application is not legal one. SDO, Mangalvedha is not acquired the property of JD. Therefore, SDO, Mangalvedha cannot become Garnishee. Further more he submitted that, Gat No. 451/2/E bearing area of 24300 sq. ft is acquired for National highway No. 166 and father of JD Sukdeo getting compensation of Rs. 47, 24,004/-. Therefore, the application is not tenable under O. XXI R. 46. Therefore, he submitted that, application be rejected.

07. J.D. Mahesh Navale appeared and filed his say below Ex.

40 and submitted that, proper procedure had not followed while filing of the application and this JD is ready to look after his son namely Prasad and demanded custody of Prasad. Further he submitted that, his father Sukdeo is not party of HMP No. 251/2016. Therefore, it cannot be recovered from Sukdeo and on 19.10.2019 he had deposited Rs. 18,000/- in Court towards arrears and he is ready and willing to deposit remaining amount as early as possible and he is duty bound to deposit the arrears of maintenance amount. Therefore, that cannot be recovered from his father Sukdeo. Therefore, he submitted that, application be rejected.

08. After going through rival contentions it appears that, Darkhast has been filed by DH for recovery of arrears of maintenance of Rs. 1,80,994/- till the date of 27.07.2018 and this was filed against Mahesh Navale i.e. JD. But by filing present application DH has submitted that, Gat No. 451/2/E property, which is situated at Sangola is acquired by Govt. of Maharashtra for Sangali – Solapur national highway and he went towards the SDO, Mangalvedha for the information. But SDO did not entertain their claim. Therefore, they constrained to file this application. By way of this application DH wants to conduct the procedure under O. XXI R. 46 of the CPC and from the argument of the counsel for DH it appears that, they want to say that, SDO, Mangalvedha and Sukdeo Navale are the Garnishee and therefore, that amount of compensation be attached till disposal of

this application as they being the Garnishee.

09. So from the argument of the DH it constrained me to go through provision of Rule 46 of O. XXI of the CPC. It runs as **'Attachment of debt, share and other property not in possession of judgment-debtor'**. By this provision they want to submit that, Prasad is having share in the property they means the acquisition amount and in that connection they further submitted that, SDO, Mangalvedha and the Sukdeo Navale are the Garnishee. Term Garnishee denotes that, the Garnishee is the person who having debt towards the JD and he is liable to pay such debt to JD. Then in that case Court issues notice to Garnishee. But in the present petition it is disputed point that needs to decide, whether SDO, Mangalvedha and Sukdeo Navale are the Garnishee and in that connection the Ld. Counsel for DH Mr. Bugade submitted that, property being ancestral or joint Hindu family property and that is acquired by SDO and DH No. 1 Prasad is having share in it. Therefore, these two persons are Garnishee. But is it specifically came on record that, the Gat No. 451/2/E is situated in the jurisdiction of Sangola Court and SDO, Mangalvedha who acquired that property is from Mangalvedha. They both do not come within the jurisdiction of this Court. However present Darkhast is for recovery of maintenance amount and in present case JD appeared and filed his say and specifically submitted that, he is ready to deposit arrears of maintenance amount. However on

19.10.2019 he had also deposited Rs. 18 thousands and therefore, he submitted that, present application is not maintainable.

10. After perusal of Ex. 18 it appears that, notice was issued to other parties i.e. JD and SDO, Mangalvedha and below Ex. 22 this DH filed application and submitted that, below Ex. 18 notices were not issued to the SDO and Sukdeo and therefore, notice be issued to them. As per Ex. 18 notice was not issued to Sukdeo Navale but this DH without permission mentioned name of Sukdeo Navale. Therefore, it appears that, Sukdeo Navale is not party to the Darkhast and from the definition of the Garnishee or the provision of O. XXI R. 46 specifically when Gat No. 451/2/E is not declared as ancestral property or joint Hindu family property, at this juncture one could not say that property is ancestral one. But DH is having right to file partition suit in the competent Court under whose jurisdiction that property is situated and as aforesaid property is not situated within the jurisdiction of this Court, DH can claim his right and interest in competent Court. Only issue before me in this Darkhast is that for recovery of arrears of maintenance and JD appeared and submitted that, he is ready to deposit the arrears of maintenance amount and already he had deposited Rs. 18,000/-. If he is not ready to deposit arrears of maintenance amount then by law the recovery of that amount will be shifted to his father or the property. But when he is ready then in my view it is not justifiable to chose the second way to recovery amount. If

certain direction and short period is granted to the JD to deposit the arrears of maintenance amount it meets the ends of justice. So in my view the authorities filed by the counsel of DH having different facts and circumstances from the present case. Therefore, those are not applicable to present case. SDO, Mangalvedha and Sukdeo Navale in my view are not Garnishee as per the provision of O. XXI, R. 46 of the CPC. Therefore, that property will not be attached specifically when that is not situated within the jurisdiction of the present Court. The property situated in another Courts jurisdiction can be attached and the procedure also led down by the law in it. But in present case that property is not in name of Mahesh but on the name of Sukdeo Navale and as earlier stated if this DH has right and interest in that property, they can file specific suit in the competent Court. So in my view application is devoid of merit. It cannot be entertain. But at the same time if direction given to the JD to deposit the amount that will suffice the purpose. Therefore, I pass following order.

ORDER

Application stands rejected, subject to direction that, the JD shall deposit the arrears of maintenance amount within the three months from the day of order in the Court, otherwise further order will be passed against him.

Dt. 13.11.2019.

Sd/-
(S. N. Rokade)
2nd Jt. Civil Judge, S.D., Barshi.

CERTIFICATE

I affirm that contents of this PDF file Order /Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer : S. V. Ghongade.
Court : 2nd Jt. C.J.S.D., Barshi
Judgment /order signed by the Presiding : 14.11.2019.
Officer on
Judgment / order uploaded on : 14.11.2019.