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| 1. | Jaiprakash s/o Pralhad Kulkarni
Age 56 years, Occu: Agriculture | ... | |
| 2. | Rajabhau s/o Pralhad Kulkarni
Age 43 years, Occu: Agriculture | | |
| 3. | Shrikant s/o Jaiprakash Kulkarni
Age 26 years, Occu: Agriculture | | |
| 4. | Sagar s/o Rajabhau Kulkarni
Age 31 years, Occu: Agriculture | | |
| 5. | Sumati w/o Jaiprakash Kulkarni
Age 51 years, Occu: Nil | | |
| 6. | Savita w/o Rajabhau Kulkarni,
Age 41 years, Occu: Nil.
All R/o Dhamangaon,
Taluka & District Beed. | ... | Petitioners |

VERSUS

1. Pranita w/o Pradeep Kulkarni
Age 43 years, Occu: Service,
R/o At Post Loni Taluka Shirur (K)
Dist. Beed.
 2. Hrishikesh s/o Pradeep Kulkarni
Age 13 years, Occu: Nil
R/o As above.
 3. Umesh s/o Pradeep Kulkarni
Age 10 years, Occu: Nil
R/o As above.
- Respondents 2 & 3 - minors, through
their natural guardian-mother respondent
No.1 Pranita w/o Pradeep Kulkarni)

...
 Advocate for petitioners : Mr. Tungar Nikhilesh K.
 APP for Respondents State: Mr. P. N. Mule
 Advocate for Respondents : Mr. N.L. Jadhav

...
CORAM : T. V. NALAWADE
DATE : 16th July, 2015

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides for final disposal by consent.
2. The petition is filed to challenge the judgment and order in Criminal Appeal No. 80 of 2014 which was pending before the Sessions Court, Beed and the judgment and order in Criminal Application No.245 of 2013 which was pending before the learned JMFC, Ashti.
3. Respondent Nos.1 to 3 had filed proceedings under section 12 of the Protection of Women from Domestic Violence, Act 2005. In the said proceedings, ex-parte order is made against the present petitioners and the learned JMFC has directed the petitioners to pay monthly maintenance of Rs.2000/- to Respondent No.1, Rs.1500/- each to respondent Nos. 2 and 3 and Rs.3000/- per month towards monthly rent. Compensation is also granted. This decision is challenged in appeal. The appeal is dismissed.
4. Learned counsel for the petitioners mainly submitted that the procedure as laid down for hearing of application filed under section 12 of the D.V. Act was not followed by the Magistrate and on the basis of evidence on affidavit given by the wife, the matter is decided by the JMFC. The learned counsel took this Court to provisions of rule 6(5) of the D.V.

Act and also section 126 of the Criminal Procedure Code. The procedure laid down shows that hearing needs to be done as hearing of summons cases under Criminal Procedure Code. It is clear that such procedure was not followed. When there was no substantial evidence, the matter is decided by the JMFC.

There is dispute between the parties about partition. It is the case of the present respondents that there was partition by metes and bounds and they are deprived of property which had come to their share and present petitioners are enjoying the property. It is the case of the present petitioners that partition has not taken place. Learned counsel for the respondents has produced copy of Plant in RCS No. 380/2012. The suit includes the properties which are allegedly allotted to the share of the present respondents.

5. Respondent No.1 has lost husband. Her husband died in the year 2005. It is her case that she has nothing to survive and as she is prevented from using the property of her husband, there is economic abuse against her and so there is domestic violence.

6. In view of the aforesaid circumstances and existence of the property in respect of which dispute is there, this Court holds that some interim relief needs to be given in favour of the present respondents. Learned JMFC has granted maintenance at the aforesaid rate. This Court holds that this amount needs to be treated as interim arrangement.

7. Learned counsel for the petitioners relied on the decision of this

Court reported in **1982 CRI.L.J. 1460 (Ramesh Laxman Contractor Vs. Jayshreeben Ramesh Contractor)** which is on the point of procedure which needs to be followed.

8. In the aforesaid circumstance, the petition is allowed.
9. Judgment and order delivered in Appeal by the Sessions Court and order in Misc. Cri Application No. 245 of 2013 made by the JMFC are hereby set aside. The matter is remanded back to the JMFC, Ashti. Both sides to appear before the learned JMFC on 11.08.2015.
10. Learned JMFC, Ashti is to expeditiously dispose of the matter and in any case within three months from the date fixed for appearance.
11. This order is subject to the condition that amount of Rs,90,000/- is deposited in the Court of JMFC before 11.08.2015 by the present petitioners. If the amount is not deposited, it is to be treated that the present petition is dismissed and decision given by the learned JMFC is confirmed.
12. The petitioners shall go on depositing maintenance at the aforesaid rate till the decision of the proceedings filed under sections 12 of the D. V. Act.
13. Rule is made absolute in the aforesaid terms.

(T. V. NALAWADE, J.)

JPC