

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.448 Of 2002.

Eknath s/o Shamrao Borade.

Age : 45 Years., Occ.: Agriculturist.

R/o.: Sipora Bazar, Tal. Bhokardan.

Dist. Jalna.

:: Petitioner.

Versus

(1) Chhababai w/o Eknath Borade.
Age : 44 Years., Occ.: Household.

(2) Vandana s/o Eknath Borade.
Age : 20 Years., Occ.: Household.

(3) Sandeep s/o Eknath Borade.
Age : 16 Years., Occ.: Nil.

(4) The State of Maharashtra. **:: Respondents.**

Appearance =>

Mr. B.A. Shinde, Advocate for the Petitioner.

None present for Respondent Nos. 1 to 3.

Mr. V.P. Kadam, Additional Public Prosecutor for the State of Maharashtra
– Respondent No.4.

CORAM : V.M. DESHPANDE, J.

DATE : 12th MARCH, 2015.

ORAL JUDGMENT :-

By the present Writ Petition, the Petitioner is challenging the concurrent Judgment and Order passed by the court below granting maintenance @ Rs.200/- per month to Respondent No.1 and @ Rs.100/- per month each to Respondent Nos. 2 and 3.

[2] I have heard Mr. B.A. Shinde, learned counsel for the Petitioner in extenso and Mr. V.P. Kadam, learned Additional Public Prosecutor for the State – Respondent No.4.

[3] Though Respondent Nos. 1 to 3 were served, it appears that they have not engaged any counsel to represent them before the court.

[4] Mr. B.A. Shinde, learned counsel for the Petitioner vehemently urged before this court that both the courts below have committed error in granting maintenance allowance in favour of Respondent Nos. 1 to 3. He submitted that, in view of compromise that arrived between the Petitioner and Respondent No.1, Respondent No.1 has lost her right to claim maintenance. He further submitted that, in fact, the Petitioner has already purchased three acres of agricultural land situated at village Kosgaon, Tal. Bhokardan from land Gat No.354 and the said land is given for the maintenance of Respondent No.1. He submitted that, this vital aspect was not properly considered by the courts below hence, error has crept in and there is miscarriage of justice, therefore, he prayed that, both the orders be set aside.

[5] The relations between the Petitioner and Respondent No.1 as husband and wife is not at all in dispute. It is also not in dispute that, Respondent Nos. 2 and 3 were born from the said wedlock. In fact, before the revisional court the Petitioner has given-up his challenge in so far as maintenance to Respondent Nos. 2 and 3 is concerned, as according to him, he being father of Respondent Nos. 2 and 3, he is responsible for their maintenance. Even before this court, the said stand is reiterated.

[6] In that view of the matter, this court is called upon to decide the question of maintenance only in respect of Respondent No.1 – Chhabubai / wife of the Petitioner.

[7] There is no dispute that for first thirteen years of the marriage, everything was sailing smooth. According to the Petitioner, after thirteen years, Respondent No.1 has developed the tendency to go to her parents house and reside there and, therefore, according to the Petitioner, she has no right to claim maintenance, because she on her own accord started residing separately. Though at the first blush this submission appears to be attractive however, upon closure scrutiny, it is hard to digest that a lady, having one son and one daughter, on her own accord will start residing separately from her husband, without any cause.

[8] Certificate issued by Gram-Panchayat, Bhayadi is placed on record. Said certificate is at Exhibit – 18. Said certificate clearly shows that, during the subsistence of marriage between the Petitioner and Respondent No.1, the Petitioner has performed second marriage with Sheelabai and from said Sheelabai, he is having two daughters. Though the suggestion was given to the Petitioner that he has performed second marriage with Sheelabai during the subsistence of his marriage with Respondent No.1, he has denied the said suggestion. Certificate Exhibit – 18 clearly shows that, denial by the Petitioner is only for the sake of denial.

[9] When it is found that, husband has entered into second marriage during subsistence of first marriage, the first wife has every right to reside separately from him. If first wife is residing separately, for the said reason, no fault can be found with the attitude and approach of first wife. Since in the present case, marriage of the Petitioner with Sheelabai is performed during subsistence of marital tie between the Petitioner and Respondent No.1, Respondent No.1–Chhabubai was right in residing separately from the Petitioner and on that count, her claim of maintenance cannot be denied.

[10] Further it is established on record that, previously also Respondents were required to file proceeding for maintenance against the Petitioner and it

was registered as Criminal M.A.No.1/1997. It appears that said maintenance proceeding was compromised. According to Respondent No.1, since the Petitioner has failed to follow the terms of said compromise, she was required to file present maintenance proceeding.

[11] According to the learned counsel for the Petitioner, earlier proceeding for maintenance was compromised and Rs.11,000/- were given to Respondent No.1 by way of maintenance. Copy of said compromise is available on record, which is at Exhibit -23. Both the courts below have considered the said document.

[12] It is clear from the order passed by courts below that Exhibit – 23 is completely silent as to whether Respondent No.1 has received Rs.11,000/- by way of her past maintenance or future maintenance. The burden was on the Petitioner to show that, Respondent No.1 has received Rs.11,000/- by way of her future maintenance. Both the courts below have rightly reached to the conclusion that the Petitioner has failed to discharge the said burden.

[13] Mr. B.A. Shinde, learned counsel vehemently argued that, the Petitioner has also purchased three acres of agricultural land at village Kosgaon, Tal. Bhokardan and, therefore, Respondent No.1 has no right to claim maintenance from him. Exhibit – 43 is the sale deed in respect of land purchased at village Kosgaon. Said sale-deed is in the name of the Petitioner and not in the name of Respondent No.1. Further at the stage of decision of present Criminal Revision Application, “Watnipatrak” (वाटणीपत्रक) dated 22nd June, 1995 is placed on record. It was not placed before the courts below. From perusal of the same, it appears that, it is unregistered document. There can be oral partition however, if the partition is effected under a document, then in view of provisions of Registration Act, 1908 said document is compulsorily registrable. Document which was not filed on record and which is filed first time before this court is

not at all registered document, therefore, it does not lie in the mouth of the Petitioner that, agricultural land is purchased and title is transferred in the name of Respondent No.1.

[14] The learned counsel for the Petitioner tried to substantiate his submission by pointing out the 7/12. Revenue record never confers the title. It is cardinal rule of law that, revenue record follows the title. In that view of the matter and especially, when revenue record and 7/12 extract are only for fiscal purpose, those documents never confer title on everybody. In that view of the matter submission of the learned counsel for the Petitioner, cannot be accepted.

[15] Further it is established on record that the Petitioner is having irrigated land to the tune of 25 acres and dry land to the tune of 35 acres. Besides that he is having grocery shop. That clearly show that the Petitioner is a wealthy person. In that view of the matter, grant of maintenance allowance @ Rs.200/- per month to Respondent No.1 is too meager and since there is no application for enhancement, this court does not wish to exercise its extraordinary writ jurisdiction to upset the well reasoned judgment of the courts below. Hence, present Writ Petition is dismissed. No costs. Rule is discharged.

(V.M. DESHPANDE, J.)