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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 123 OF 2014

Sow. Kushabai w/o Raghunath Padile,
age: 75 years, Occ: Nil,
R/o Mushirabad,
Tq. and District Latur.

PETITIONERS

VERSUS

1. Shailendra s/o Raghunath Padile,
age: 46 years, Occ: Agriculture,
R/o Mushirabad,
Tq. & District Latur.
2. Mahendra s/o Raghunath Padile,
**(Petition dismissed vide order dated
02.05.2014)**
3. Sow. Urmila w/o Dilip Kasle,
age: 48 years, Occ: Household,
R/o Gaur, Tq. Nilanga,
District Latur.
4. Sow. Jayashree w/o Shrihari Malwade,
age: 39 years, Occ: Household,
R/o Mushirabad,
Tq. & District Latur.

RESPONDENTS

Mr.V.D.Gunale, Advocate for the petitioner.
Mr.P.K.Deshmukh, Advocate holding for Mr.M.L.Dharashive, Advocate for
Respondent No.1.
Mr.S.L.Pansambal, Advocate for Respondents No.3 & 4.

CORAM : N.W. SAMBRE, J.

DATE : 24th November, 2015

ORAL ORDER :

1. Regular Civil Suit No.56 of 2007 filed for partition and recovery of possession, came to be partly decreed by judgment and order dated 13th June, 2011, against which an appeal, bearing R.C.A. No.142 of 2011, was carried by original defendant no.1. In the said appeal, an application (Exhibit-13) under Section 151 of the Code of Civil Procedure is filed by the Respondent No.1 to the said appeal, claiming to be the mother of original defendant no.1 and another son i.e. original defendant no.2.

2. The said application for grant of interim maintenance is rejected by the learned District Judge-1, Latur, by order dated 11th September, 2013. Thus, the present petition.

3. While assailing the impugned order, Mr.Gunale, learned Counsel appearing on behalf of the petitioner, would urge that the application for maintenance was prompted to be moved by the petitioner herein in view of the fact that she was residing in same village with applicant no.3 to the said application i.e. Jayashree because her sons have refused to maintain her. He would then add that since the appellant – original defendant no.1 is in possession of the suit property, is liable to pay maintenance as prayed for.

4. According to the learned Counsel, appearing on behalf of Respondent No.1, the appeal is ripe for hearing and there is no legal right

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in favour of the present petitioner to claim maintenance. He would then urge that the application is moved at the behest of applicant no.3- Jayashree-plaintiff who intend to get benefit of the order of maintenance. He would then submit that the appeal itself can be heard finally.

5. Having bestowed my anxious thought to the rival submissions, it is noted that during pendency of the trial of the suit or even after appeal was filed, there was no such application for maintenance. It is only at this stage, an application for grant of maintenance is moved, that too under Section 151 of the Code of Civil Procedure.

6. The fact remains that the petitioner, claiming to be staying along with applicant no.3 – Jayashree and Jayashree maintaining her, could have prompted her to file the said application against legal representatives of her deceased husband i.e. her son. However, this Court though not intending to give finding on *bona fides* of the petitioner, however, act of the petitioner in moving the application only against Respondent No.1, just because he is claimed to be in possession of the property is required to be taken note of. No such claim was put-forth before the Trial Court. In my opinion, the Court below has rightly rejected the application for interim maintenance, in the pending appeal.

7. In view of above, no case for interference is made out warranting exercise of extraordinary jurisdiction of this Court.

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8. Thus, writ petition stands rejected with no order as to costs. However, having regard to the age of the petitioner, in my opinion, it will be appropriate to direct the learned District Judge-1, Latur, to decide the appeal itself within a period of eight weeks from the date of receipt of order of this Court.

(N.W. SAMBRE, J.)

amj