

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 833 OF 2015

MIRABAI SHIVAJI AWARE
VERSUS
DATTATRAYA SHIVAJI AWARE AND OTHERS

...
Advocate for Petitioner : Shri Babasaheb V. Wagh
Advocate for Respondents 1 & 2 : Shri Rahul R Karpe

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 02, 2015
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PER COURT :-

1. The petitioner seeks to assail the judgment and order passed by the appeal Court dated 15.11.2013 in Misc. Civil Appeal No.80 of 2013 and Misc. Civil Appeal No.83 of 2013.

2. The submissions of the petitioner can be summarized as follows:-

(a) The petitioner is aggrieved by the judgment dated 15.11.2013 delivered in MCA No. 80 of 2013. There is no challenge to the conclusions of the appeal Court to the extent of MCA No.83 of 2013 filed by the alleged husband of the petitioner.

(b) The petitioner claims to be the first and therefore, the legally wedded wife of respondent No.3 - Shivaji. Shivaji is said to have married another lady by name Sindhubai.

(c) Respondents 1 and 2 - Dattatray and Digambar are said to be

the biological sons of Sindhubai owing to her alleged wedlock with Shivaji.

(d) It is alleged that Shivaji has deserted the petitioner - Mirabai.

(e) She, therefore, preferred RCS No.301 of 2012 claiming an injunction and share in the property.

(f) Application for temporary injunction was allowed on 3.5.2013.

(g) Dattatray and Digambar filed MCA No.80 of 2013, challenging the Exhibit 5 order, whereas, Shivaji also challenged the said order through MCA No.83 of 2013.

(h) By the impugned judgment and order dated 15.11.2014, MCA No. 80 of 2013 has been allowed and MCA No.83 of 2013 has been rejected.

(i) The property alleged to be purchased by Dattatray and Digambar is a joint family property and such a property, as well as the properties of Shivaji, which happen to be joint family properties, will have to be divided in metes and bounds and they cannot be isolated while calculating the share of the petitioner.

(j) By the impugned order, the properties of Dattatray and

Digambar have been prima facie held to be their own properties and not a part of the joint family property.

(k) Dattatray and Digambar are, therefore, likely to create third party interest in their properties Gut No.52/1 and 52/2, situated at Paithan, which will defeat the claim of the petitioner.

(l) In an application under Section 125 of the Code of Criminal Procedure, bearing No. 96 of 1998, the learned Judicial Magistrate (First Class), by judgment dated 23.4.2003 has concluded that the field Gut No.52 belongs to respondent No.4 Chandrabhagabai, who is mother of Shivaji. It is the said property Gut No.52, which has been standing jointly in the name of Digambar and Dattatray along with their deceased mother Sindhubai.

(m) These findings of the learned Judicial Magistrate (First Class) were in connection with assessing the financial strength of Shivaji and as such, the learned Judicial Magistrate (First Class) directed Shivaji to pay maintenance to the petitioner.

(n) Findings on facts have been arrived at by the learned Judicial Magistrate (First Class), which could not have been lost sight of by the appeal Court while delivering the impugned judgment dated 15.11.2013.

(o) Some restrictions need to be imposed on Dattatray and Digambar in relation to their property Gut Nos. 52/1 and 52/2 till the disposal of RCS No.301 of 2012.

3. Shri Karpe, learned Advocate has appeared, on caveat, on behalf of respondents 1 and 2. His submissions are as follows:-

(a) Respondent No.3 Shivaji has not questioned the impugned judgment, dated 15.11.2013 and so is the case with the fourth respondent, who is the grand-mother of respondents 1 and 2.

(b) The petitioner has claimed to be the wife of Shivaji and in the Written Statement filed by him, he has denied that she was ever his legally wedded wife.

(c) In paragraph No.14, the appeal Court has maintained the charge on the property of Shivaji Pandurang situated at Shevgaon, which is practically 8 to 9 acres.

(d) Even if the share of the petitioner is concerned, subject to she establishing herself to be the legally wedded wife of Shivaji, would be roughly 7 to 8 acres, out of a land approximately 16 acres owned by Shivaji.

(e) The property standing in the name of Dattatray and Digambar

is situated at Paithan in district Aurangabad and has nothing to do with the claim of the petitioner.

(f) This petition has been filed only to mount pressure upon respondent Nos.1 and 2 and so as to extract some more property from respondent Nos.1 to 3 by engaging them in litigation.

(g) The conclusions drawn by the learned Judicial Magistrate (First Class) in judgment dated 23.4.2003 delivered in Criminal M.A. No.96 of 1998 cannot be taken to be a finding on facts, since, neither were Dattatray and Digambar party to the said proceedings, nor were they given any opportunity to establish their right, title and interest in field Gut No.52/1 and 52/2.

(h) The conclusions of the learned Judicial Magistrate (First Class) can at the most be considered from the point of view that Shivaji appeared to be an agriculturist having few lands and was, therefore, capable of paying maintenance to the petitioner, as per the judgment of the learned Judicial Magistrate (First Class).

(i) The impugned judgment has been delivered on an interlocutory order and the interest of the petitioner has been sufficiently safeguarded by the observations of the Appeal Court in paragraph Nos.14, 16 and Clause (3) of the operative part of the impugned judgment.

(m) Dattatray and Digambar can establish before the trial Court that the properties Gut No.52/1 and 52/2 are self acquired properties.

4. I have considered the submissions of the contesting parties and which are recorded herein above. The petitioner is concerned with her share in the property of Shivaji by claiming to be his legally wedded first wife. Sindhubai, according to the petitioner is the second wife and therefore, cannot be termed to be the legally wedded wife. The petitioner, however, does not dispute that Dattatray and Digambar are the two sons born to deceased Sindhubai out of her relationship with Shivaji.

5. The appeal Court has ensured that the charge is maintained on the entire properties standing in the name of Shivaji. It is yet to be established that the properties standing in the name of Dattatray and Digambar are not their self acquired properties. The appeal Court has ensured that the charge on the properties of the petitioner's alleged husband Shivaji are maintained and he is prevented from creating third party interest or alienating his properties till the decision in RCS No.301 of 2012.

6. It is in this backdrop that I am of the view that the appeal Court, by maintaining the part of the order below Exhibit 5, dated 3.5.2013, passed by the trial Court, has ensured that the petitioner's claims are neither frustrated nor truncated and in the event it is established that she is the

first and legally wedded wife of Shivaji, she would stand to gain her rights in the property alleged to be joint family property.

7. According to the contentions of the rival parties, the petitioner will have to establish before the trial Court as regards her status of being a legally wedded wife, her right to the joint family property as well as her claim to the properties standing in the name of Dattatray and Digambar.

8. By the impugned judgment the appeal Court has made an effort to balance the equities. I do not find that the impugned judgment could be termed as being perverse or erroneous or causing grave injustice to the petitioner. Merely because another view can possibly be taken, would not mean that the impugned judgment is rendered unsustainable in law.

9. In the light of the above, the petition being devoid of merits is dismissed.

(RAVINDRA V. GHUGE, J.)

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