

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.739 OF 2014

Bhagyawant Atmaram Deokar and Anr. ... Applicants
Vs.
Sou. Yashodabai Atmaram Deokar and Ors. ... Respondents

Mr. Girish B. Badigar for Applicants.
Mr. Vaibhav P. Patankar for Respondents No.1 and 3.

CORAM : R. G. KETKAR, J.
DATE : 21ST JULY, 2015

P.C. :

Heard Mr. Badigar, learned Counsel for applicants and
Mr. Patankar, learned Counsel for respondents No.1 and 3 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, original defendants No.3 and 4 have challenged the judgment and order dated 25.09.2012 passed by the learned 2nd Joint Civil Judge, Senior Division, Pune below exhibit-26 in Special Civil Suit No.183 of 2009. By that order, the learned trial Judge rejected the application exhibit-26 filed by the defendants No.3 and 4 and held that to the extent of the respondent No.1's share in the property of her husband, she is entitled to seek exemption from payment of Court fees. The learned trial Judge after considering the Notifications dated 01.10.1994 and 23.03.2001 observed that the purpose of the beneficial social scheme in the form of Notifications issued by the Government is for the benefit of woman about the property dispute. The dispute namely Suit for partition of the properties is a matrimonial dispute and therefore, respondent No.1 is entitled to the exemption.

3. In support of this Application, Mr. Badigar submitted that respondent No.1, hereinafter referred to as the plaintiff, has instituted Suit at the instigation of one of her sons (defendant No.2). In other words, he submitted that plaintiff is set up by defendant No.2 with a view to getting exemption from payment of Court fees. He, therefore, submitted that the learned trial Judge was not justified in exempting the plaintiff from payment of Court fees. In any case, he submitted that if the Court is inclined to uphold the order of the trial Court, it may be clarified that after adjudication, if ultimately it is found that the plaintiff is not the sole beneficiary but there are others then to the extent of her son's share, her sons will have to pay the Court fees. He relied upon the decision of this Court in the case of *Ramila Rajnikant Kilachand Vs. Harsh Rajnikant Kilachand*, **2004 (6) Bom.C.R. 75**.

4. On the other hand, Mr. Patankar supported the impugned order. He submitted that even in the case of **Ramila R. Kilachand** (*supra*), in paragraph 19, this Court held that the term “matrimonial matters” would include within its import, cases not just of divorce, judicial separation, annulment of marriage, interim maintenance, alimony, custody of children, maintenance envisaged by marriage laws but matters concerning property rights which arise out of matrimonial relationship. The term has to be understood in the context of a relationship after marriage and qua a family. While interpreting a provision, which is beneficial in nature, law is intended to confer a right on a weaker section so as to remove an obstacle and give opportunity to seek redress. In other words, he submitted that even in this case, Suit for partition is held to be covered by the term “matrimonial matters”. He also relied upon the decision of this Court in the case of *Kiran Chunilal Talreja Vs. Ramchandra Devidas Talreja*, **2008 (5) Mh.L.J. 958**. In that case also, this Court considered the question whether the plaintiffs in a Suit for

partition and separate possession were entitled to exemption. After considering the Notifications dated 01.10.1994 and 23.03.2001, this Court held that plaintiffs being women in a Suit for partition were entitled to exemption from payment of Court fees.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The learned trial Judge has rejected the application filed by defendants No.3 and 4 after considering the Notifications dated 01.10.1994 and 23.03.2001. In paragraph 5, the learned trial Judge held that the plaintiff is entitled to exemption from payment of Court fees. I, therefore, do not find that the learned trial Judge has committed any error in passing the impugned order. In the case of **Ramila R. Kilachand** (*supra*), it was observed in paragraph 20 that in case of a woman beneficiary coming as a litigant to the Court seeking share of the deceased husband, which is denied to her by the members of the husband's family, the matter is covered by the explanation and could safely be termed as a property dispute arising out of matrimonial relationships. The Court, therefore, held that to the extent of the plaintiff's share in the property of her husband, she is entitled to seek exemption from payment of Court fees. It was thereafter clarified as under:

“ ... It is clarified that after adjudication, if ultimately, it is found that the plaintiff is not sole beneficiary but there are others then to the extent of her sons share, plaintiff or the sons will have to pay Court fee. Suit for partition is not a suit where parties are strictly adversaries. It is a suit where all parties are plaintiffs and defendants. In such litigation, it will not be proper to hold that the woman litigant would be entitled for exemption in payment of Court fees, not just qua her share as beneficiary but even that of her sons. As held by this Court (Patil, J.), exemption will be restricted to the plaintiff and her share in the estate of deceased.”

6. In view thereof, while deciding the Suit, the Court will consider

the submissions made on behalf of defendants No.3 and 4 that only the plaintiff was entitled to exemption and others being male members are liable to pay Court fees. Subject to this clarification, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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