

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6422 OF 2014

Anita Hanmant Chandode and another

.. Petitioners

Versus

Shankar Hanmant Chandode and others

.. Respondents

Mr. A. B. Tajane a/w Ms. Manali Patil, for the Petitioners.

Mr. P. M. Tilak, for the Respondent Nos.3 & 4.

Mr. D. S. Patil, for the Respondent Nos.1 & 2.

CORAM : R.M. SAVANT, J.

DATE : 15th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 01.03.2014 passed by the Learned Civil Judge Senior Division, Solapur, by which order the Application Exh.8 filed by the Petitioners/original Plaintiffs for being granted maintenance pending the suit came to be allowed and the Trial Court has fixed the maintenance at Rs.1000/- each for the Plaintiff No.1 and the Plaintiff No.2.

2. The Petitioners herein are the original Plaintiffs who have filed the suit in question for partition of the suit properties. The Plaintiff No.1 i.e. the Petitioner No.1 is the widowed daughter-in-law of the Respondent Nos.1 and 2 herein. The husband of the Petitioner was one

Hanmant Chandode who was the son of the Respondent Nos.1 and 2. It seems that after the demise of said Hanmant Chandode the relations between them started getting strained, pursuant to which the suit in question being Special Civil Suit No.112 of 2013 came to be filed by the Plaintiffs for partition and separate possession of the suit property. It is required to be noted that the said Hanmant Chandode has two brothers and the agricultural lands admeasuring 5 Hectors each are standing in the name of the two brothers and said Hanmant Chandode as they were purchased in their names. It is the case of the Plaintiff No.1 that the Defendants i.e. Defendant No.1 has a large income from the agricultural lands which is borne out by the fact that the Defendants possess various types of vehicles like Tractor, Trolley etc. and the Plaintiff therefore claimed maintenance at the rate of Rs.25000/- each. The Defendants contested the said application filed on behalf of the Plaintiffs and it is the case of the Defendants that the 5 Hectors of land which was in the name of said Hanmant Chandode has been entered in the names of the Plaintiffs as well as the Defendant Nos.1 and 2 as the heirs of the said Hanmant Chandode and that the Defendant No.1 is cultivating the said land for himself and the benefit of the Plaintiffs, the Trial Court firstly adjudicated the issue as to whether the Defendants are liable to maintain the Plaintiffs and secondly, adjudicated the issue as to the maintenance that the Plaintiffs

would be entitled to. The Trial Court on the basis that the Defendants are agriculturists and that the Plaintiff No.1 is the widowed daughter-in-law and has no separate income held that it is obligation of the Defendant Nos.1 and 2 to maintain the Plaintiffs who are the widowed daughter-in-law and the granddaughter of the Defendant Nos.1 and 2. The Trial Court however having regard to the facts as stated herein above fixed the maintenance at Rs.1000/- each for the Plaintiff No.1 and the Plaintiff No.1.

3. The Learned Counsel appearing on behalf of the Petitioners sought to contend that having regard to the large tracks of agricultural lands in possession of the Defendants, the said maintenance is too meagre having regard to the fact that the Plaintiff No.1 has to look after her daughter who is school going. In so far as the 5 Hectors of lands which were standing in the name of said Hanmant Chandode are concerned, the Learned Counsel would contend that the said land is non-irrigated land and therefore it is not possible to agriculturally exploit it. Upon this, the Learned Counsel Mr. D. S. Patil appearing for the Respondent Nos.1 and 2 and Defendant Nos.1 and 2 would contend that except for one block of land which is admeasuring 3 Hectors and 35 Ares at Mundhewadi which is a irrigated block the rest of the lands of the Defendants are non-irrigated. The Learned Counsel would contend that the Defendants have no

objection if the Plaintiff No.1 cultivates the land which was standing in the name of Hanmant and derives income from the same. The Learned Counsel would contend that however no case for enhancement of the maintenance is made out.

4. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the statement which was made before the Trial Court that the Defendant Nos.1 and 2 have no objection to the Plaintiff No.1 cultivating the said land of 5 Hectors which was standing in the name of said Hanmant Chandode and deriving income there from has been reiterated before this Court. It is also required to be noted that the statement made by the Learned Counsel except the block of 3 Hectors and 35 Ares of lands at Mundhewadi rest of the lands of the Defendants are non-irrigated has not been controverted by the Learned Counsel appearing on behalf of the Petitioners. If that be so, then the conclusion that is required to be drawn is that the Defendants are mainly relying upon the income from the said block of 3 Hectors and 35 Ares land at Mundhewadi from which income they have to maintain themselves and the Plaintiff Nos.1 and 2. Hence, though the Trial Court has fixed the maintenance at Rs.1000/- each for the Plaintiff Nos.1 and 2, in my view, it would be just and proper to enhance the said maintenance by Rs.1000/- each to the Plaintiffs so as to make Rs.2000/- each to the Plaintiffs as

having regard to the present cost of living the amount of Rs.2000/- as originally granted by the Trial Court cannot be said to be sufficient for the Plaintiffs to sustain themselves. Hence, the impugned order is therefore interfered with only to the extent of granting enhancement to the extent mentioned in the instant order. In view of the statement made on behalf of the Respondent Nos.1 and 2 herein, it would be open for the Plaintiff No.1 to cultivate the land of 5 Hectors which was originally standing in the name of said Hanmant Chandode and derive income from the same. The Learned Counsel Mr. D. S. Patil assures this Court that the Respondent Nos.1 and 2 would not cause any impediment in the way of the Plaintiff from doing so.

5. In the light of the above, the Writ Petition to stand disposed of. In the event, the Plaintiff starts deriving income from the said land admeasuring 5 Hectors standing in the name of her husband Hanmant Chandode, the Respondent Nos.1 and 2 would be at liberty to file an application for variation of the maintenance which application would undoubtedly be considered by the trial court on its own merits and in accordance with law.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.