

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 477 OF 2005

Bhagwan s/o Wamanrao Vanway,
Age 78 years, Occ. Nil,
R/o. Savargaon (Sone),
Tq. Patoda, District Beed

...Petitioner

versus

1. Ramchandra s/o Bhagwan Vanway,
Age 42 years, Occ. Agricultural
2. Shamrao s/o Bhagwan Vanway
Age 38 years, Occ. Agricultural
3. Manik s/o Bhagwan Vanway,
Age 32 years, Occ. Agricultural
4. Kashinath s/o Bhagwan Vanway
Age 31 years, Occ. Agricultural

All R/o. Savargaon (Sone),
Tq. Patoda, District Beed

5. Bhimrao s/o Bhagwan Vanway,
Age 37 years, Occ. Agricultural
R/o. Bhatodi, Tq. Ashti
District Beed

...Respondents

.....
Mr. A.S. Kulkarni h/f Mr. A.N.Nagargoje, advocate for petitioner
Smt. Asha D. Rakh, advocate for respondent No.5

.....

CORAM : V. K. JADHAV, J.
DATED : 26th AUGUST, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and order passed by the

learned J.M.F.C. Patoda, district Beed dated 16.8.2002 in Misc. Criminal Application No. 30 of 1999 and also by the judgment and order passed by 4th Adhoc Additional Sessions Judge, Beed in Criminal Revision application No. 87 of 2002, original applicant has preferred this writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

a) The petitioner is the original applicant in Misc. Criminal application No. 30 of 1999 filed before the learned J.M.F.C. Patoda under Section 125 of Cr.P.C. In the said application, the petitioner had claimed maintenance of Rs.300/- p.m. each from respondent Nos. 1 to 5, who are his sons. The petitioner is 78 years old person. He was also suffering ailments and due to old age, he required to take regular medical treatment. It has also stated in the application that his second wife Dwarkabai initiated one proceeding for grant of maintenance against him. As per the order passed by the court in the said proceeding, the petitioner has to pay an amount of Rs.125/- to her as maintenance. It has also stated in the application that he has no independent source of income and he is unable to maintain himself. It has also contended that his all ancestral property has been partitioned between his sons way back in the year 1985 and

since then the respondents are cultivating the said land personally and getting annual income of Rs.25,000/- each. The respondent Nos. 1 to 5 though having sufficient means, refused and neglected to maintain him.

b) Respondent Nos. 1 to 4 have not filed their say, however, respondent No.5 strongly resisted the application by filing his say. According to him, he is son of second wife of the petitioner and his mother has filed an application for maintenance against the petitioner in the Court at Ashti. It has also contended that there is joint family of applicant as well as respondent Nos. 1 to 4 and they have nominally shown partition on paper without any actual partition of the landed property. However, respondent No.5 is not given share in the property and he is not put in possession of landed property. It has further contended that opponent Nos.1 to 4 and applicant are taking income from the said land. He had also instituted a suit for partition and possession and also for share in compensation amount for the acquired land by the Government. Even though five acres land is shown to have been allotted to his name, respondent Nos. 1 to 4 and step mother disposed of the said land to one Ramkishan Fakira and no share in the consideration amount was given to him. The applicant and opponent Nos.2 to 4 are residing jointly and enjoying income from irrigated land which is in their possession. Thus, the

applicant is not entitled to claim maintenance from respondent No.5 herein.

c) On the basis of evidence on record and after hearing the parties through their counsel, learned J.M.F.C. Patoda by his order dated 16.8.2002 in Misc. Criminal Application No. 30 of 1999 rejected the application. Being aggrieved by the same, the petitioner had preferred Criminal Revision application No. 87 of 2002 wherein the learned 4th Adhoc Additional Sessions Judge, Beed by order dated 19.7.2004 partly allowed the criminal revision application and thereby directed respondent Nos.1 to 4 to pay the petitioner an amount of Rs.150/- p.m. from the date of application alongwith costs of Rs.300/-. However, the judgment and order passed by the learned Magistrate is confirmed to the extent of order passed against respondent No.5. Being aggrieved by the same, the petitioner has filed present writ petition.

3. Learned counsel for the petitioner submits that the respondent No.5 has got share in the ancestral land and accordingly the mutation entry came to be sanctioned way back in the year 1990. Even in 7x12 extract name of respondent No.5 appears in the ownership column as well as in cultivation column. Respondent No.5 is able bodied person and is bound to maintain his old and ailing

father. All respondents are having sufficient means to pay maintenance to the petitioner as claimed in the application.

4. Learned counsel for respondent No.5 submits that respondent No.5 has no source of income and he is doing labour work for his livelihood. Mother of respondent No.5 has filed maintenance application against the present petitioner and accordingly maintenance allowance is granted to his mother at the rate of Rs.125/- p.m. Furthermore, respondent No.5 has also instituted civil suit for partition and also for getting share in the compensation amount against the present petitioner and respondent Nos. 1 to 4 herein. The petitioner alongwith respondent Nos.1 to 4 is enjoying landed property and even though no partition has been effected by metes and bounds, the partition is shown to have been effected on the paper only. The petitioner is able to maintain himself and there is no question to pay any maintenance to him by respondent No.5.

5. It appears from the documents produced alongwith the application that respondent No.5 has been allotted specific portion of the land in the family partition and accordingly mutation entry No. 290 came to be sanctioned in the year 1990. It has specifically mentioned in the said mutation that the present petitioner Bhagwan

has partitioned his ancestral land amongst five sons including respondent No.5 and also retained some portion of the land for his maintenance. However, the petitioner at the time of filing of said application was more than 70 years old and I do not think that it is possible for him to cultivate agricultural land allotted to his share personally. The learned Adhoc Additional Sessions Judge by its impugned order dated 19.7.2004 has directed respondent Nos. 1 to 4 to pay maintenance amount at the rate of Rs.150/- p.m. to the petitioner-original applicant, however, confirmed the order passed by the Magistrate so far as the rejection of application against respondent No.5 herein. It appears from the evidence of respondent No.5 that he is able bodied person and alongwith his other brothers, he is liable to maintain his old aged ailing father. I do not find any justifiable reason for rejecting the application against respondent No.5. Learned Adhoc Additional Sessions Judge has considered the evidence on record and directed the respondents/sons to pay the maintenance to petitioner-father of Rs.150/- p.m. each. The impugned order passed by the 4th Adhoc Additional Sessions Judge, Beed in said criminal revision is liable to be quashed and set aside to that extent and application filed by the petitioner is allowed in terms of order passed against the respondent Nos. 1 to 4 herein in the said revision application. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is hereby partly allowed.
- II. The Judgment and order passed by the 4th Adhoc Additional Sessions Judge, Beed dated 19.7.2004 in Criminal Revision Application No. 87 of 2002 is hereby quashed and set aside to the extent of clause "c" of para 3 of operative part of the order, whereby confirming the order passed by the Magistrate against present respondent No.5.
- III. The original application is partly allowed with costs in the same terms as is passed against respondent Nos. 1 to 4 and respondent No.5 shall also pay the petitioner an amount of Rs.150/- p.m. from the date of filing of this writ petition alongwith costs of Rs.500/-.
- IV. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)