

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12921 OF 2016

Maruti Khasaba Pawar And Ors. ...Petitioners
Versus
Sunanda Sambhaji Pawar And Ors. ...Respondents

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Mr.Mahindra B. Deshmukh, Advocate for the Petitioners.

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CORAM : R. G. KETKAR, J.

DATE : 22nd DECEMBER, 2016

P.C.

1. Heard Mr. Mahindra Deshmukh, learned Counsel for the petitioners, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 16.3.2016 passed by the learned Jt. Civil Judge, Junior Division, Kadegaon below Exhibit-5 in R.C.S. No.214/2014. By that order the learned trial Judge directed the defendants No.1 & 3 to pay interim maintenance @ Rs.4,000/- per month to the plaintiff from the date of the order till decision of the suit.
3. In support of this Petition, Mr. Deshmukh submitted

that respondent No.1 has instituted suit for partition and possession of her share. During pendency of the suit, she filed application for maintenance. He submitted that in a suit for partition, the respondent cannot file application claiming maintenance under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 (for short, 'Act'). Said proceedings are the substantive proceedings. He also invited my attention to the suit properties described in paragraph-1 of the plaint. Out of these properties, the properties at Sr. No. 1 & 2 are already alienated. As far as properties at Sr. No. 3 to 6 are concerned, the petitioner No.1 is in possession of meager portion. He is a heart patient. For meeting medical expenses, he was constrained to sell the properties at Sr. No.1 & 2. The learned trial Judge while passing the impugned order did not consider the fact that respondent No.1 is able to maintain herself or not and what is her requirements. Without considering these aspects, the learned trial Judge has awarded maintenance @ Rs.4,000/- per month.

4. I have considered the submissions advanced by Mr.Deshmukh. I have also perused the material on record. While passing the impugned order, the learned trial Judge has

observed that the husband of the plaintiff was suffering from HIV and she is also suffering from HIV. The plaintiff has averred in the plaint that her two sons also died because they were HIV affected. She has specifically averred that she is not getting any income from the ancestral properties. The learned trial Judge after considering the material on record also held that the plaintiff has no means for her livelihood. In paragraph-9, the learned trial Judge has referred to the crops taken by the defendants, like, sugar-cane, soyabean etc. It was also noted that except defendant No.2, no other person is dependent on defendant No.1. Considering the requirement of the plaintiff, including costs incurred towards the medical treatment, the learned trial Judge awarded maintenance @ Rs.4,000/- per month. The learned trial Judge also considered Section 19 of the Act and held that the plaintiff is entitled to maintenance from defendant No.1 as she has not yet received her undivided share in the ancestral properties. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed

(R. G. KETKAR, J.)