

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

926 FIRST APPEAL NO. 1971 OF 2017

VASANTRAO BAPURAO SHEVALE
VERSUS
ARCHANA MADHAVRAO SHEVALE

...

Advocate for Appellant : Mr. Mahesh V. Ghatge.
AGP for Respondents: Mr. M. B. Sandanshiv.

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CORAM : **V. K. JADHAV, J.**
DATE : 06th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the order dated 24th November, 2016 passed by the learned Additional Sessions Judge, Parbhani below Exhibit 1 in Miscellaneous Civil Application No.591 of 2015, the original Respondent has preferred this appeal.

3 Brief facts giving rise to the present appeal are as follows:

Respondent was the legally wedded wife of the son of Appellant namely Madhav alias Pandurang. Their marriage was performed on 18th March, 2001 as per the Hindu rites and ceremonies. During subsistence of their marital

wedlock, Respondent gave birth to a son and a daughter namely Aditya Shewale and Dipali Shewale. Unfortunately, said Madhav alias Pandurang died on 21st May, 2014. It is the case of Respondent that after demise of her husband, she was subjected to ill-treatment by the present Appellant and his family members on various counts. Even the dispute also arises in respect of the movable and immovable property amongst them. It has also alleged that subsequently, the Appellant had driven out the Respondent alone from his house. Thus, the Respondent constrained to file an application bearing Miscellaneous Civil Application No.591 of 2015 under Sections 7 and 25 of the Guardian and Wards Act, 1960 read with Sections 6 and 13 of the Guardian and Wards Act for the custody of her minor children. The Court below has issued the notice of the said application to the present Appellant and even though the present Appellant duly served, failed to appear in the said

proceedings. Thus, the hearing of the said application proceeded *ex-parte* against him. The learned Additional Sessions Judge, Parbhani vide its impugned order below Exhibit-1 in Miscellaneous Civil Application No.591 of 2015 allowed the application and thereby directed the present Appellant to handover the custody of the minor children i.e. (1) Dipali Madhavrao Shewale (daughter) and (2) Aditya Madhavrao Shewale (son) to the present Respondent forthwith, failing which it is stated in the order that the Respondent is entitled to take custody of the children by executing this order as a decree of the Civil Court. Hence, this appeal.

4 The learned counsel for Appellant / original Respondent in the said miscellaneous proceedings submits that though the summons was served upon the Appellant, since the Appellant was prosecuting other four matters with the Respondent, he could not understand as to in which matter the said notice was served on him. Only after issuance of the search warrant and in terms of the said warrant the

children were produced before the Court below, the Appellant came to know about the said miscellaneous proceedings initiated by the Respondent seeking the custody of the children and the order passed in the said miscellaneous proceedings by the Court. The learned counsel submits that even the children when produced before the Court in response to the execution of the warrant, expressed their unwillingness to stay with the mother. The learned counsel submits that instead of going into the merits and demerits of the case, the Appellant may be given an opportunity to put up his case before the Court below in the said miscellaneous proceedings.

5 The learned counsel for Respondent submits that the Respondent came to be driven out from the house and the Appellant retained the children with him with some ulterior motive. However, the learned counsel also agree with the submissions made by the learned counsel for Appellant and submits that if the matter is remanded to the Court below then those proceedings may be directed to be disposed of as expeditiously as possible preferably within a period of one month.

6 In view of the above submissions and considering the welfare of the children, it would be just and appropriate if the Appellant is given one more opportunity to put up his case before the Court in

those proceedings and the Court if directed to dispose of the said proceedings expeditiously. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The order dated 24th November, 2016 passed by the learned Additional Sessions Judge, Parbhani below Exhibit-1 in Miscellaneous Civil Application No.591 of 2015, is hereby quashed and set aside.
- III. The matter is remitted back with the following directions:
 - a) Restore Miscellaneous Civil Application No.591 of 2015 to its original position and decide the same afresh by giving an opportunity to the Appellant to file say / written statement, if any.
 - b) The Appellant / original Respondent shall file his say / written statement, if desires, on the date of appearance

before the Court below.

c) If such say / written statement is submitted before the Court below, the Appellant as well as the Respondent are at liberty to adduce oral and documentary evidence in support of their rival contentions.

d) The Court below shall dispose of Miscellaneous Civil Application No.591 of 2015 as expeditiously as possible preferably within a period of two months from the date of appearance of the parties.

IV. The parties shall appear before the Court below on 20th July, 2017.

V. The appeal is accordingly disposed of.

VI. Pending civil application stands disposed of.

[V. K. JADHAV, J.]