

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9169 OF 2017

Tukaram S/o Pandurangrao Pawar
Age : 57 years, Occ. Agriculture,
R/o. Sambar, Tq. & Dist. Parbhani

...Petitioner
(Ori. Defendant No. 1)

Versus

1. Saraswatibai w/o Tukaram Pawar
Age-47 years, Occu. Household,
R/o. Sambar Tq. & Dist. Parbhani
At present : Sable Galli, Jintur,
Tq. Jintur, Dist. Parhbhani. ...Ori. Plaintiff

2. Dnyaneshwar s/o Tukaram Pawar
Age-27 years, Occu. Agriculture,
R/o. Sambar, Tq. & Dist. Parbhani

3. Dnyanoba s/o Tukaram Pawar
Age : 28 years, Occ. Student,
R/o Sambar, Tq. & Dist. Parbhani
At present : Sable Galli, Jintur,
Tq. Jintur, Dist. Parhbhani. ...Respondents
(Ori. Deft. No. 2 & 3)

...

Mr. Pravin N. Kalani, Advocate for petitioner

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 25th July, 2017

JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for petitioner.
3. Petitioner is before this court challenging order dated 20th March, 2017, passed by civil judge, junior division, Parbhani on application exhibit-31 in regular civil suit no. 243 of 2014.
4. The suit has been instituted under provisions of Section 25 of Hindu Maintenance and Adoption Act, 1956 for enhancement of amount of maintenance granted to her under a decree passed in regular civil suit no. 30 of 2006 on the grounds mentioned in the plaint whereunder she had been defendant.
5. Regular civil suit no. 243 of 2014, had been instituted by plaintiff for enhancement in maintenance amount from Rs.300/- to Rs.3000/- per month from defendant no. 1 – present petitioner and charge of her enhanced maintenance was kept over land Gut no. 300 situated at

Sambar taluka and district Parbhani to the extent of half share of defendant no. 1.

6. Learned counsel for petitioner submits that said decree in regular civil suit no. 30 of 2006 has been subject matter of challenge in regular civil suit no. 276 of 2011, which has been filed by one Sopan against petitioner-Tukaram and others, seeking declaration that decree in regular civil suit no. 30 of 2006 to be null and void.

7. Learned counsel states that present respondent no. 1 had deliberately filed regular civil suit no. 30 of 2006 for maintenance and it is directly and substantially under challenge in regular civil suit no. 276 of 2011. In the circumstances, request had been made under application exhibit-31 to stay further proceedings of regular civil suit no. 243 of 2014 which is sequel to decree passed in regular civil suit no. 30 of 2016 granting maintenance to respondent no. 1. Whereas it appears, it is not the case whereunder effect and operation of decree of regular civil suit no. 30 of 2006 has been affected, yet, nor it had been stayed in regular civil suit no. 276 of 2011.

8. Further, trial court under order dated 20th March,

2017 has observed that after filing evidence closing *pursis* (exhibit-16) defendant appeared in the suit and evidence affidavit exhibit-13 is filed on 22nd July, 2015. Thereafter, applications exhibit-24 and 25 have been rejected and an adjournment had been granted subject to costs of Rs. 300/-.

9. Trial court observed that relief of declaration has not been subject matter in present suit as in suit of 2011 nor plaintiff nor plaintiff of 2011 suit is party before the court in the suit. As such, ingredients here fall short of for being covered by Section 10 of the Code of Civil Procedure. There is no apparent error in the order passed by the trial court, which would require consideration under writ jurisdiction.

10. Writ petition, as such, is not entertained and stands rejected. Rule stands discharged.

11. Needless to refer to that this order would not pose impediment for petitioner to take resort to remedy as may be deemed proper.

[SUNIL P. DESHMUKH, J.]