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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 89 OF 2012

Balasaheb s/o Rangnath Late,
Age: 48 years, Occu: Agril.,
R/o: Kothul, Tq. Shrigonda,
Dist. Ahmednagar

..APPELLANT

VERSUS

1. Ashabai w/o Balasaheb Late,
Age: 40 years, Occu: Agril.,
R/o: Ghotvi, Tq. Shrigonda,
Dist. Ahmednagar
2. Rangnath s/o Rambhau Late,
Since deceased Through Lrs.
- 2A) Dropadabai w/o Rangnath Late,
Age: 80 years, Occu: Agril.,
R/o: Kothul, Tq. Shrigonda,
Dist. Ahmednagar
- 2B) Mirabai w/o Manikrao Lole,
Age: 48 years, Occu: Household,
R/o: Sangvi, Tq. Haveli,
Dist. Pune
- 2C) Radhabai w/o Bhau Chaudhari,
Age: 50 years, Occu: Household,
R/o. Vadhane, Tq. Baramati,
Dist. Pune
- 2D) Kalpana w/o Mohanrao Korekar,
Age: 39 years, Occu: Household,
R/o. Nhavare, Tq. Shirur,
Dist. Pune

..RESPONDENTS

Mr R. R. Karpe, Advocate for appellant;
Mr S. A. Deshpande, Advocate holding for Mr N. V. Gaware, Advocate for
respondent No.1

CORAM : N. W. SAMBRE, J.

DATE : 7th June, 2017

ORAL ORDER

Special Civil Suit No.123 of 2003, instituted by respondent no.1 – wife for maintenance came to be decreed by learned Civil Judge (Senior Division), Shrigonda on 23rd January, 2006, thereby awarding maintenance of Rs.3,000/- per month and Rs.1,08,000/- towards the maintenance of past three years, which decree was modified in appeal being Regular Civil Appeal No.91 of 2006 by the learned District Judge-5, Ahmednagar, thereby setting aside the order to the extent of maintenance for last three years. Thus, the present Second Appeal.

2. Amongst other, the grounds canvassed for questioning the judgments and decrees of both the Courts below are, that the appellant has never deserted respondent no.1 and in fact was ready and willing to maintain her. Reliance is sought to be placed on the pleadings from the written statement at Exh.17. In addition, a ground is raised that the lands Gat Nos.25 and 33 are self-acquired properties of defendant no.2 and not the ancestral properties. What is owned by the appellant is only 32 R land out of Gat Nos.26 and 32.

3. According to the learned Counsel, the order of maintenance is not sustainable or in the alternative the amount of maintenance is required to be reduced to Rs.1,000/- per month.

(3)

4. Per contra, the learned Counsel for the respondents-plaintiffs would urge that the issue of desertion as was framed by the learned trial Court was very much proved based on pleadings and evidence. According to him, the finding of fact as regards award of maintenance of Rs.3,000 per month is based on the income derived by the present appellant from 32 R land out of Gat Nos.26 and 32. According to him, the appellant has 8 anas share out of Gat Nos.26, 32, 163, 22 and 25. Thus, he prayed for dismissal of the appeal.

5. Considered the rival submissions. It is to be noted that the issues were framed at Exh.25, particularly as regards desertion of respondent No. 1-plaintiff by the present appellant. In support of the claim, the date of marriage and her residence with her parents, i.e. of respondent No.1-plaintiff was appreciated. The maintenance application under Section 125 of the Code of Criminal Procedure awarding maintenance of Rs.300/- per month and other material evidence brought on record was very much appreciated. In addition to the evidence of respondent No.1-plaintiff, she has examined her brother as P.W.2, who also supported her case.

6. In view of the concurrent findings of fact recorded by both the Courts below on the issue of desertion, particularly in the background of the pleadings and the oral evidence as is brought on record, I hardly see any substance for interfering with the said findings.

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7. So far as the next ground about quantum of maintenance is concerned, in my opinion, the holding of 8 anas share in the ancestral land is very much proved. As the said findings are also based on the factual matrix, in my opinion, no interference is warranted. The appeal does not involve substantial question of law and as such stands dismissed.

(N. W. SAMBRE, J.)

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