

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11316 OF 2017
(Purushottam Shankar Ghodgaonkar Vs. Gajanan Shankar
Ghodgaonkar and others)

Mr.R.R.Mantri h/f Mr.R.R.Sancheti, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 24/07/2017 passed by the Appellate Court by which application Exh.100 filed by respondent No.1 is allowed and the petitioner is directed to pay Rs.10,000/- per month as interim maintenance w.e.f. 25/04/2017. Respondent No.1 is allowed to withdraw the amount after furnishing a surety to the extent of such amount.

2. Learned Advocate for the petitioner has strenuously criticized the impugned order. He has drawn my attention to the 11 grounds formulated by him in the memo of the petition. It is submitted that the petitioner is a 94 year old real brother of respondent No.1 who is himself about 90 years old. Reg.Civil Appeal No.25/2014, preferred by the petitioner for challenging the judgment and decree of the Trial Court in RCS No.167/2000, is subject matter of the pending appeal.

The decree has been stayed by the Appellate Court pending the decision in the appeal.

3. Grievance is that though the petitioner is in possession of the suit land, respondent No.1 retired as a Commissioner of Food Corporation of India and is earning his pension. He does not require interim maintenance as he has several movable and immovable properties. When the Appeal is pending final hearing, the application Exh.100 was not required to be filed. The petitioner is willing to proceed with the appeal forthwith and the same can be decided speedily.

4. It is further contended that the comparative earnings of the petitioner and respondent No.1 should have been considered as well as whether the respondent has any other source of income. When these factors are not considered, the grant of interim maintenance is unsustainable and the impugned order is perverse and erroneous.

5. I find from the impugned order that the Appellate Court, while considering the application filed by respondent No.1, has considered the following factors :-

- [A] Existence of a relationship between the parties under the Hindu Law.
- [B] The possession of the property during the litigation.

6. While considering the above aspects, it was noted that though respondent No.1 has succeeded in the suit and he has been granted 6/15th share in the suit property, the said property is yet to be handed over to him. The petitioner is in possession of the suit property for years together. The said properties in Gat Nos.307, 310 and 388 are large irrigated agricultural lands and the appellant is also operating a medical shop. Taking into account the comparative hardships, the Appellate Court found it appropriate to direct the payment of Rs.10,000/- only as interim monthly maintenance.

7. Considering the above and keeping in view the law laid down by the Hon'ble Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], the impugned order cannot be interfered with merely because a different view is possible. Unless the order impugned causes grave injustice, no interference is called for.

8. I find that it would be appropriate and in the interest of both the sides, considering that they are 94 years and 90 years of age respectively and other parties involved also more than 70 years of age on an average, to direct the Appellate Court to decide Civil Appeal No.24/2013 as expeditiously as possible and on or before 29/12/2017.

9. This petition is, therefore, disposed of without causing interference in the impugned order, in the light of the above directions.

10. At this juncture, the learned Advocate for the petitioner requests that as the interim maintenance is being paid during the pendency of the appeal, same is an interim arrangement and the amount paid be adjusted as against the claims of respondent No.1 while deciding the appeal. The said request is accepted. As the amount paid is by way of interim maintenance, the same shall be subject to the payments and adjustments in the appeal when the Appellate Court decides the same on its own merits.

(Ravindra V.Ghuge, J.)