

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8964 OF 2016

Shri.Kundalik Gyanba Gade	...Petitioner
Versus	
Smt.Hirabai Kundalik Gade & Anr.	...Respondents

**WITH
CIVIL APPLICATION NO.2835 OF 2017
IN
WRIT PETITION NO.8964 OF 2016**

Smt.Hirabai Kundalik Gade & Anr.	...Petitioners
Versus	
Shri.Kundalik Gyanba Gade	...Respondent

Mr.Mohan Dada Waghmode for the Petitioner.

Mr.Rajaram V. Bansode for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 06th DECEMBER 2017

P.C.

1. Heard Mr.Mohan Waghmode for the petitioner and Mr.Rajaram Bansode for the respondent.

2. The challenge in this petition is to the order dated 20-04-2016 by which the petitioner has been directed to pay to the respondent No.1 an interim maintenance of Rs.2,000/- per month with effect from 02-04-2007.

3. Mr.Waghmode, the learned counsel for the petitioner submits that there is absolutely no material on record to establish that the respondent No.1 was indeed the wife of the petitioner. He submits that on the contrary there is material on record to suggest that the petitioner is married to one Akkatai. He submits that in the voters list for the year 1975, 1995 and 2002 it is the name of the Akkatai which is indicated as the wife of the petitioner.

4. Mr.Waghmode further submits that the petitioner is 80 years of age and he is earning no income whatsoever. He submits that the properties of which cognizance has been taken by the learned Trial Judge are family properties. In these circumstances, there was a patent error in directing the petitioner to pay the maintenance at the rate of Rs.2,000/- per month.

5. The learned Trial Judge, has examined the matter in some details. In particular, the learned Trial Judge has relied upon the birth certificate of defendant No.2 in the suit, which indicates that the said defendant No.2 is the son of the petitioner and the respondent No.1. The birth certificate is of the year 1976. There is no explanation as regards the birth certificate and the entries therein. At the *prima-facie* stage, it cannot be said that there was no

relationship whatsoever between the petitioner and the respondent No.1. Ultimately, this is the matter for evidence. The learned Trial Court, has also placed reliance upon the decision of this Court in ***Shantaram Tukaram Patil and Another V/s. Dagubai Tukaram Patil & Others***¹ and the provisions of the Section 25 of the Hindu Marriage Act, 1955 it cannot be said that the view taken by the learned Trial Judge is in excess of jurisdiction or vitiated by perversity.

6. On the aspect of the income, the impugned order holds that the petitioner owns agricultural land and has some income therefrom. Maintenance of Rs.2,000/- per month has been awarded. This is an interim maintenance. It cannot be said that there is any jurisdictional error in the award of the same so as to warrant interference under Article 227 of the Constitution of India.

7. Accordingly, there is no case made out to interfere with the impugned order. The petition is therefore dismissed. There shall be no order as to costs.

8. The Trial Court, however, need not be influenced by

1 AIR 1987 Bom 182

any of the observations in the impugned order or for that matter the present order while deciding the main matter on merits.

9. The petitioner has deposited an amount of Rs.1,25,000/- in this Court. The respondent is permitted to withdraw the same together with accrued interest thereon.

10. The Civil Application to this effect is therefore allowed.

11. The Petition and the Civil Applications are disposed of in the aforesaid terms.

(M. S. SONAK, J.)