

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

WRIT PETITION NO. 8979 OF 2017

Navasrao Dnyanu Jagtap & Ors.	...	Petitioners
V/s.		
Smt.Sunita Ajay Jagtap & Ors.	...	Respondents

- Mr.Pradeep S. Gole for the Petitioners.
- Mrs.Varsha Palav a/w. Mr.Ajinkya Palav i/b. The Laureate for Respondent No.1.
- Mr.Prakash D. Gharge for Respondent Nos.2, 3A to 3C.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10th APRIL, 2018.

P.C. :

1] Heard learned counsel for the parties.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 18th February 2017 passed by the District Judge-3, Karad, below the application at Exhibit-19 in Regular Civil Appeal No.7 of 2016.

3] The application at Exhibit-19 was filed by Respondent No.1 seeking interim maintenance at the rate of Rs.20,000/- per month. The said application was resisted by the present Petitioners. The

Appellate Court has, however, allowed the said application and directed the Petitioners to pay interim maintenance at the rate of Rs.10,000/- per month from the date of filing of the application i.e. 12th April 2016 till disposal of the appeal.

4] Being aggrieved thereby, this Writ Petition is preferred.

5] It is an admitted fact that Respondent No.1 has filed the suit for partition and separate possession of her 1/8 share in the suit property. During the *pendency* of the suit also, she has filed an application for interim maintenance. The said application was allowed by the trial Court and she was granted the interim maintenance at the rate of Rs.6,000/- per month. The Petitioners herein had preferred Writ Petition No.5229 of 2009 before this Court challenging the said order and the said Writ Petition came to be dismissed, thereby confirming the order of interim maintenance of Rs.6,000/- per month.

6] After Respondent No.1's suit came to be decreed and she was granted partition and separate possession of her 1/8 share, the Petitioners, herein, have challenged the said judgment and decree by filing the Regular Civil Appeal before the Appellate Court.

7] The Appellate Court has considered the income of the present Petitioners from the land which is in their possession, and which is

to the extent of Rs.10,00,000/- per annum, and also considered that Respondent No.1 may be getting Rs.5,000/- per month from her medical shop licence. However, considering the status of the Petitioners and the day-to-day expenses, which Respondent No.1 is required to incur to maintain her livelihood, Appellate Court found that, if she was getting the interim maintenance at the rate of Rs.6,000/- per month in the year 2009, then having regard to the rate of inflation, the said amount is required to be enhanced by Rs.10,000/- per month.

8] The submission of learned counsel for the Petitioners is that, the Appellate Court has not considered the evidence of Respondent No.1, which shows the admission on her part that two pieces of land are standing in her name and the sugarcane crop is being cultivated therein. According to learned counsel for the Petitioners, if she is having the agricultural lands in her name and also cultivating therein sugarcane crop, then she cannot be entitled for enhancement of the maintenance in the light of change in circumstances which is her evidence.

9] As against it, the submission of learned counsel for Respondent No.1 is that, there is no admission given by her that she is in possession of these lands. Conversely, the observation made by the

Appellate Court clearly goes to show that, there is not a single sugarcane bill standing in her name to show that she is getting any income from these lands. Therefore, the Appellate Court has enhanced the maintenance rightly to the tune of Rs.10,000/- per month.

10] In my considered opinion, though Respondent No.1 has given admission that two pieces of the land are standing in her name and the sugarcane crop is cultivated therein, there is no admission on her part that she is put in possession of the said lands. If she was already in possession of the said lands, then there was no question of decree of partition being passed in her favour. The Appellate Court has considered the aspect that not a single bill of sugarcane factory was deposited in her name.

11] In such situation, when admittedly, as per the order confirmed by this Court also, she was granted the interim maintenance at the rate of Rs.6,000/- per month, then after the lapse of about 8 years therefrom, it cannot be said that the amount of interim maintenance awarded by the Appellate Court to her at the rate of Rs.10,000/- per month is in any way excessive, exorbitant, unreasonable, so as to warrant interference therein in the writ jurisdiction.

12] The Writ Petition therefore being without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]