

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.17291 OF 2017

Kumar Sampat Shingate & Ors.	 Petitioners
V/s.	
Shobha Dadasaheb Shingate & Ors.	 Respondents

Mr. Vishwanath S. Talkute for the Petitioners.

Mr. Ajay A. Joshi for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH MARCH, 2018.

P.C. :

1. Heard Mr. Talkute, learned counsel for the Petitioners, and Mr. Joshi, learned counsel for the Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 18th September 2015 passed by the 5th Joint Civil Judge, Junior Division, Pandharpur, below the application at "Exhibit-69" in Regular Civil Suit No.399 of 2006.

3. The application at "Exhibit-69" was filed by Respondent Nos.1 to 5, who are the Original Plaintiffs, for interim maintenance in this Suit,

which was filed for partition and separate possession of their share in the joint family properties. They had claimed the interim maintenance @ Rs.3,000/- per month on the count that, the suit property being the ancestral joint family property, the income derived therefrom is quite substantial and they are being deprived from the said income and they are having no source of income to maintain themselves.

4. Petitioners have not disputed their relationship with the Respondents, though they have contended that, deceased Dadasaheb, husband of Respondent No.1, was never a member of the joint family. It was further stated that, the income, as claimed by the Respondents, being received from the joint family properties, is not a very meager one. Moreover, the share of the Respondents in the joint family properties being only $1/9^{\text{th}}$, it cannot be more than to the extent of land admeasuring 28 R; having regard to the four properties, which are standing as joint family properties and admeasuring totally 2 H 52 R. Therefore, it is submitted by learned counsel for the Petitioners that, the order passed by the Trial Court, directing the Petitioners to pay the interim maintenance @ Rs.1,500/- per month to each of the Respondents till final disposal of the Suit, being definitely on higher side and to some extent exorbitant also, that amount needs to be reduced.

5. In the alternate, it is submitted that the matter be remanded to the

Trial Court for hearing on this application again for deciding the quantum of interim maintenance, in the light of the share of the Respondents in the suit properties and the income from the said properties, which is alleged to be derived by the Petitioners.

6. Per contra, learned counsel for the Respondents has supported the impugned order passed by the Trial Court, by producing on record the 'Certificates' issued by 'Shree Pandurang Sahakari Sakhar Karkhana Limited' dated 3rd March 2018, showing that, on an average, the Petitioners are earning the income of Rs.3,00,000/- per annum from the sugar-cane crops alone and, therefore, they are in a sound financial position in respect of the income from the joint family properties.

7. Learned counsel for the Petitioners submits that, this is not the correct income and it cannot be a net income also, as the Petitioners are required to spend some amount for cultivation of the sugar-cane crops also.

8. I have given my thoughtful consideration to the submissions advanced at bar by learned counsel for both the parties. In this case, one has to consider the age of Respondent Nos.2 to 5. At the time of filing of the Suit in the year 2006, they may be minor, but, as on today, they have become the major. According to learned counsel for the

Respondents, even if they have become major, they have right of share in the income from the joint family properties and as the entire joint family properties are in possession of the Petitioners, the Respondents are entitled to get maintenance from the said properties.

9. Having regard to the share of Respondent Nos.1 to 5 in the joint family properties and also the property, which is actually in the hands of the Petitioners, and the net income they might be deriving therefrom, in my considered opinion, the quantum of maintenance awarded by the Trial Court @ Rs.1,500/- per month to each Respondent is definitely on higher side and hence, it needs to be reduced to the extent of Rs.600/- per month to each Respondent.

10. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court is modified to the extent of directing the Petitioners to pay jointly and severally the amount of Rs.600/- per month to each of the Respondents from the date of filing of the application at "Exhibit-69" till the decision of the Suit.

11. Writ Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]