

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

WRIT PETITION No.13075 OF 2017

Saroj Krishnabagwan Dixit & Ors.

... Petitioners

Vs.

Manju Surendra Dixit & Ors.

... Respondents

Mr.R.S. Datar for the Petitioners

Mr.B.K. Bali with Ms.Anju Singh & Prachiti Karnik i/b Bali Asso. for
the Respondent Nos.1 & 2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 11, 2018**

P.C. :

1. This Writ Petition is filed under Article 227 of the Constitution of India taking exception to the order dated 21.8.2017 passed by the learned Joint Civil Judge Senior Division, Kalyan, below exhibit 42 in Special Civil Suit No.39 of 2015. Respondent Nos.1 and 2 are the original plaintiffs, who filed a Special Civil Suit for declaration of their 1/8th share in the ancestral property. During the pendency of the suit, the plaintiffs moved application for distributing and paying monthly income and/or fixation of monthly amount of royalty. Petitioner Nos.1 to 10 opposed the application. The learned Judge, after considering the prayers made by the

plaintiffs and the objections raised by the petitioners / defendants, allowed the said application.

2. The learned Counsel has submitted that in the application, the respondents/original plaintiffs have not stated about their financial condition but have only claimed the 1/8th share in the property. The prayer was in fact made for appointment of Government Valuer in respect of suit properties and thereafter to fix the royalty payable by defendant Nos.1 to 10 to the plaintiffs to the extent of 1/8th share of the plaintiffs. He submitted that there is no evidence on record for the Court to assess what is the income out of the suit property and the Court has arbitrarily arrived at a sum of Rs.15,000/- per month. He further submitted that out of the entire suit property, some properties are fallen to the share of defendant No.1 i.e., petitioner No.1, the mother in law of plaintiff No.1. She has received this property from her parents and, therefore, the respondents/original plaintiffs have no claim in the said property. He further submits that the order passed by the learned Judge is beyond the scope of prayers in the application and it is to be set aside.

3. Learned Counsel for the respondents/original plaintiffs submits that though the financial condition of the respondents is not mentioned in the application, he submits that respondent No.1, i.e, plaintiff No.1, is not in a good financial condition and she is disabled by her right hand after she met with an accident. It is further submitted that plaintiff No.2, who is the grandson of defendant No.1, is taking education and needs money for the education and survival. The learned Counsel submits that in fact she has moved application for the appointment of Court Valuer and Court Receiver. The learned Counsel submits that she has moved an application for appointment of Court Receiver to save wastage and damage to the property and that application is marked exhibit 38. However, the learned Judge has rejected the said application and allowed the said application for exhibit 42 and rightly fixed the amount of royalty @ Rs.15,000/- per month.

4. Heard submissions. Perused both the orders below exhibits 38 and 42. Perused the application and the documents which are pointed out by the learned Counsel for both the sides. It is a suit for partition filed by the widow of the son of defendant No.1 and the brother of defendant Nos. 2 to 10. Plaintiff No.2 is the son of

defendant No.1. From the application, it is found that Surendra expired on 3.12.2001 and since last 15 years, the plaintiffs did not receive any income or any amount from the ancestral properties of Surendra. So, the suit for partition claiming 1/8th share in the said property is filed.

5. The suit is pending since 2015. The issues are not yet settled. In view of this, the application at exhibit 38 for appointment of Court Receiver and application praying for appointment of Valuer and valuing the property and giving some royalty to the plaintiffs were made. The learned trial Judge has considered the facts of the case and has weighed the facts and circumstances of the case and also the status of both the parties rightly. This being a suit for partition, the relationship between the parties is the foremost weighing factor while considering such application. The Court has rightly used its discretionary power in fixing the amount of royalty of Rs.15,000/- per month. This may be considered as a royalty or a part of royalty i.e., carving out a portion of share of the plaintiffs at the interim stage, after considering the nature of the suit properties. The trial Court has also considered that property No.(i) and (vii) are disputed and they

may be properties exclusively owned by defendant No.1 , the mother in law. The learned Judge in his impugned order has used the words that he is granting reasonable amount of royalty for the maintainance of the plaintiffs.

6. In view of the parameters of justice, the impugned order cannot be faulted with. It is maintained. It is made clear that the amount of royalty will be subject to outcome of the suit. However, the petitioners are directed to deposit the amount of royalty within two weeks from today in the trial Court and the respondent Nos.1 and 2 are allowed to withdraw the same. The suit is expedited and the parties are directed to cooperate with the trial Court.

7. Writ Petition is dismissed accordingly.

(MRIDULA BHATKAR, J.)