

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 154 OF 2017

1. Ramrao s/o Gyanbarao Choure
Age 82 years, occ. nil.
2. Sou. Taibai w/o Ramrao Choure
Age 69 years, occ.household

Both r/o Shyamnagar,
Tq. & Dist. Nanded.

Applicants

Versus

Pandharinath s/o Ramrao Choure
Age 51 years, occ. Service
r/o Shyamnagar,
Tq. & Dist. Nanded.

Respondent

Mr. A.D. Hande, Advocate for the applicants.
Mr. Ravindra Nirmal, Advocate for the respondent.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 25th July, 2019.

JUDGMENT :

1. Applicants are taking exception to the order dated 10.04.2017 passed by the learned Judge, Family Court, Nanded, in Petition No. E-15/2015 thereby rejecting the application filed by the applicants under Section 125 of the Code of Criminal Procedure. Needless to state that the applicant no. 1 is 84 years old and applicant no. 2, who happens to be his wife, is about 71 years old.

2. Such of the facts necessary for decision of this revision application are as follows :

Respondent herein happens to be the son of the applicants. Applicants had two sons and a daughter. Unfortunately, one of the sons died in an accident and the daughter is married. It is the case of the applicant no. 1 that he was in service in District Central Co-operative Bank at Nanded and had constructed house no. 1-19-597 comprising of 9 rooms. Three rooms on the eastern side are occupied by the respondent, three rooms are occupied by the widow of the second son Dinesh and her children and the rest portion is in possession of the applicants. Applicant no. 1 caused partition in the ancestral property, share of which is allotted to the respondent. Applicant no. 2 had also inherited some agricultural land from her parents. Said land is situated at village Chudawa, Tq. Purna, Dist. Parbhani. The land is being cultivated by the respondent. Hence, according to applicants, they have no source of income and it is difficult for them to maintain themselves in this old age. Respondent draws salary of Rs. 20,000/- as he is in service of a co-operative society. According to applicants, the annual income of respondent is about Rs. 5,00,000/-.

3. It is the contention of respondent that it would not be correct to say that applicants have no source of income since they have agricultural lands at village Kalmula and Chudawa and they can cultivate their lands on their own.

4. Applicants have placed on record several documents such as the certified copy of mutation entry no. 652 at Exhibit 22, salary

certificate of respondent at Exhibit 30 and, extract of gat no. 15 at Exhibit 31.

5. According to respondent, on 03.06.2016, he had filed an application seeking resignation and therefore, he himself is without any source of income. Respondent has submitted that since the house property is not a self-acquired property, there is no question of paying rent. According to him, the applicants can cultivate their lands and earn their maintenance. In short, according to the respondents, he is not liable to pay any maintenance to the applicants. It is the contention of applicants that the house property is the self-acquired property however, the same is denied by the respondent. It appears that the house is built on the plot allotted to the applicants by the co-operative society. Housing loan was taken in the year 1976-1977 and the house is built about 40 years ago. Applicants had specifically contended before the Family Court that in the eventuality the house was constructed from the nucleus of the ancestral property, the brothers of applicant no. 1 would also have claimed their share.

6. The learned Judge has failed to appreciate that even according to the applicants, the respondent had sold the property situated at CIDCO and kept Rs. 13,00,000/- for himself. The learned Judge has appreciated that applicant no. 1 had discharged his obligation as a father however, according to the learned Judge, since the applicants are the owners and possessors of the agricultural land admeasuring 4 H 50 R and 3 H 90 R respectively, they can cultivate the land and therefore, the claim for maintenance is rejected. The learned Judge has considered that

the resignation of respondent has been accepted and that he is out of service since 30.06.2017. However, in the cross examination, defence witness no. 2 has categorically stated that the respondent is serving in Dhokeshwar Multi State Co-operative Society, Nanded and earning salary of Rs. 25,000/- per month. The learned Judge has lost sight of the age of the applicants and their ability to cultivate the lands at such an advanced stage of life. Moreover, there is evidence that the lands are being cultivated by the respondent.

7. Infact, the applicants did not have proper guidance and therefore, had not taken recourse to the proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Old age is a mitigating factor. There is no doubt that aging has become a major social challenge and, despite provisions of Code of Criminal Procedure for maintenance, it was deemed necessary to have inexpensive and expeditious measures to claim maintenance for the parents and therefore, the said act was enacted. Even under Section 125 of the Code of Criminal Procedure, it is incumbent upon the Court to consider sub-Clause (1)(d) of Section 125 of the Code of Criminal Procedure. It is true that the lands stand in the name of the petitioners. However, it is difficult for them to cultivate the lands personally and since several years, the lands are being cultivated by the respondent as is demonstrated by evidence. In the written say, the respondent has also admitted that he has received a share of the land in gat no. 15 admeasuring 2 H and 15 R besides a share in the residential premises. Infact, it is unfair on the part of the respondent to go to the extent of saying that the house is not a self-acquired property. He holds his lien

over the property and refuses to maintain his parents. Infact, Section 125 of the Code of Criminal Procedure also casts an obligation upon the children to maintain their old aging parents and make them fully secured in the advanced stage of life and not just claim right of inheritance in the property, which their parents have earned by soil and toil. It is further unfortunate that there has been a special law and special provisions in the Code of Criminal Procedure to remind the children of their filial relationship. It is further unfortunate that, according to the respondent, the parents have given them property since it is their duty and not because it was demanded. But a statutory and moral duty is also cast upon the children to look after the aged parents and not just claim right of inheritance.

8. Learned counsel for the applicants has submitted that only because applicant no. 1 filed a petition under Section 125 of the Code of Criminal Procedure, the respondent has gone to the extent of resigning from the job to evade payment of maintenance. The petition is filed in the year 2015 and the resignation letter is dated 03.06.2016. There is some essence in the said submission. Owning agricultural land and ability to cultivate the same are two different things. The Court has committed a grave error in denying the claim of the applicants. Applicants were claiming maintenance of Rs. 3,000/- towards rent and it was the contention of the respondent that there is no written contract for payment of rent. It is surprising that the Court has upheld the said contention. Upon perusal of the written statement filed by the respondent, one feels sorry for the aging generation, as according to the respondent, the applicants have no *locus standi* to file such a petition against the

respondent. In cases like the present one, the moral consideration of the Court would take a back seat as a duty is cast upon the Courts to interpret the statutory provision and implement the rule of law as Section 125 of the Code of Criminal Procedure specifically contemplates maintenance to the parents who are unable to maintain themselves.

9. In view of above discussion, the impugned order deserves to be quashed and set aside. The Maharashtra Amendment of 2001 to Section 125 of the Code of Criminal Procedure provides as follows :

Subject to the ceiling laid down in this sub-section (Section 125), the amount of interim maintenance shall, as far as practicable, be not less than 30% of the monthly income of the respondent.

10. This Court is of the opinion that if interim maintenance can be granted upto 30%, the same would apply for final order.

11. For the reasons discussed above, following order is passed :

ORDER

1. The revision is allowed.
2. Order dated 10.04.2017 passed by the Family Court in Petition No. E 15/2015 is quashed and set aside.

3. Respondent to pay maintenance of Rs.6,000/- (Rs. 3,000/- each) per month to the applicants.

4. Maintenance to be paid on or before 5th day of every month. Upon failure to pay maintenance for any two consecutive months, the applicants would be entitled to seek remedy under Section 125(3) of the Code of Criminal Procedure.

5. Applicants are also granted liberty to file proper petition under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, wherein the appropriate Court would be empowered to get the part of the residential premises occupied by the respondent, vacated.

6. Respondent shall also pay Rs. 3,000/- towards cost of the present revision application.

(SMT. SADHANA S. JADHAV, J.)

dyb/