

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10058 OF 2019

Manohar s/o Yuvraj Patil

Petitioner

Versus

Bhavrao Harchand Patil (Shinde)
and others

Respondents

Mr.J.R.Shah, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 13th August, 2019

PER COURT:

1 The petitioner, original defendant no.2, is aggrieved by the interlocutory order dated 03.07.2019, passed by the appellate Court, by which the judgment and decree dated 17.08.2018, passed in RCS No.666 of 2012, has been stayed during the pendency of RCA No.109 of 2018. The condition imposed upon the four appellants – original defendants no.1 to 4 is that they would jointly pay Rs.10,000/- (Rs. Ten thousand) per month to Respondent No.1 from the date of the order till the decision in the appeal.

2 The learned advocate for the appellant no.2 – sole petitioner submits that a *jirayat* land is at issue, which is the subject matter of partition. It does not give sufficient yield so as to pay Rs.10,000/- per month to Respondent No.1. The said respondent has not prayed for a share in the *mesne* profits and is not entitled to the said amount. The amount is exorbitant and cannot be paid by the petitioner. My attention is drawn to the eight grounds formulated in the memo of the petition.

3 The record reveals that the petitioner, along with three other appellants, are in possession of 16 acres of land. They are harvesting the said land and earning agricultural income. The suit has been decreed and the plaintiff is held to be entitled for 1/3rd share, defendants no.1 to 8 are entitled to get 1/3rd share and defendant no.9 is entitled to 1/3rd share in the property. As such, almost 5 acres of land, belonging to the plaintiff, is in possession of the four appellants.

4 The plaintiff preferred an application Exhibit-16 in the appeal filed by the appellants for opposing stay to the judgment of the trial Court and has further averred that the appellants are utilising his share for the past 40 years. They are deriving

agricultural income. *Bajri, Jawar, Moog* and Cotton are the different types of crops which are said to be reaped in the said agricultural land.

5 I find that an equitable order has been passed by the appellate Court by which each of the appellants has to pay only Rs.2500/- per month to the plaintiff. One of the appellants is a retired lecturer, one is associated with an educational institution, one is in service and his mother is a home maker.

6 Considering the above, merely because a different view could be taken, would not mean that the impugned order could be termed as being perverse or erroneous. This Court has laid down the law in the case of **Sandeep Ramesh More & others Vs. Narayan Deoba More & others**, 2006 (4) MhLJ 486, that the Court can direct payment of interim maintenance if the other party has share in the property.

7 In view of the above, this petition is dismissed. Nevertheless, since the appeal is of the year 2018, if the appellants submit a private appeal paper book within ten weeks from today, the appellate Court would endeavour to decide the appeal, as

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expeditiously as possible and preferably on or before 31st March, 2020.

RAVINDRA V. GHUGE
JUDGE

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