

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13096 OF 2016

SOU.VAISHALI VIKRAM PATIL AND ORS.)...PETITIONERS

V/s.

VIKRAM DATTATRAYA PATIL AND ORS.)...RESPONDENTS

WITH

WRIT PETITION NO.8441 OF 2016

VIKRAM DATTATRAYA PATIL AND ORS.)...PETITIONERS

V/s.

SOU.VAISHALI VIKRAM PATIL AND ORS.)...RESPONDENTS

Shri.PB.Gujar i/b. Shri.Nilesh Patil, Advocate for Petitioners in Writ Petition No.13096 of 2016 and for Respondent Nos.1 to 3 in Writ Petition No.8441 of 2016.

Shri.Bhushan Walimbe, Advocate for Petitioners in Writ Petition No.8441 of 2016.

Shri.Umesh Pawar, Advocate for Respondent No.1 in Writ Petition No.13096 of 2016.

CORAM : A. M. BADAR, J.

DATE : 8th NOVEMBER 2019

P.C. :

1 Writ Petition bearing No.13096 of 2016 is by original plaintiffs whereas Writ Petition No.8441 of 2016 is by original defendants. Both the parties are challenging the order dated 5th January 2016 passed by the learned District Judge, Islampur, below an application at Exhibit 23 in Miscellaneous Civil Application No.56 of 2015. The operative portion of this impugned order reads thus :

“9 I find admittedly the respondent no.1 is second wife and having children from applicant no.1. It is duty of applicant no.1 to maintain respondents. Whether decree is null and void is to be decided in appeal. The properties are in possession of applicants. So, I find if interim maintenance is granted to respondents, then purpose of application will be served. Hence, I find that appellants intend to challenge the decree in respect of immovable property and legal rights of the parties are involved, decree is to be stayed, however simultaneously, interest of respondent is to be protected. They can not come on road. Therefore, I find in present case, it is necessary to ask the applicants to pay interim maintenance of

Rs.3000 p.m. to each respondents till disposal of appeal. With this, I find that without setting aside the order passed on exh.14, appellants/applicants are directed to pay interim maintenance of Rs.3000 p.m. to each respondent nos.1 to 3 from the date of application till disposal of appeal.”

2 Heard finally.

3 The learned counsel appearing for petitioners/original defendants in Writ Petition No.8441 of 2016 vehemently argued that the impugned order is without jurisdiction and it went beyond the scope of pleadings, and therefore, the same cannot be sustained. Support is drawn from judgment of the Hon'ble Apex Court in the matter of Manohar Lal (D) by Lrs. vs. Ugrasen (D) by Lrs. & Ors.¹ As against this, the learned counsel appearing for respondents in the said petition for petitioners/original plaintiffs in Writ Petition No.13096 of 2016 argued that the impugned order is passed by the learned Appellate court in exercise of powers under Rule 6 Order 41 of the Code of Civil Procedure (hereinafter

1 (2010) 11 SCC 557

referred to as CPC for the sake of brevity) in the matter of stay to the decree passed by the learned trial court and as such, the order is perfectly within the scope of jurisdiction of the learned appellate court.

4 I have considered the submissions so advanced and perused the material placed before me.

5 The suit for partition and separate possession came to be filed by respondent nos.1 to 3 in Writ Petition No.8441 of 2016. The said suit came to be decreed exparte. Petitioners in Writ Petition No.8441 of 2016/defendants in the suit then preferred an application under Section 96 of the CPC challenging the decree for partition and separate possession. Main ground for challenge to the decree is to the effect that plaintiff Vaishali Patil is second wife of defendant Vikram Patil, and therefore, she was not entitled to seek partition and separate possession. The appeal was accompanied by an application for condonation of delay, an application for stay of the decree as well as an application for

grant of status-quo. The learned appellate court on an application for grant of status-quo had passed an order directing Revenue Officers not to hand over possession as per the Watap Patra. Therefore, plaintiffs i.e. second wife and her daughters preferred an application for vacation of the order of status-quo. This application came to be marked as Exhibit 23 and the order passed thereon is impugned by both parties in the instant petition. Perusal of application at Exhibit 23 shows that plaintiffs averred that by belatedly filing an appeal, stay is obtained by defendants and that order of stay is causing prejudice to plaintiffs. It is further averred in the said application at Exhibit 23 by plaintiffs that without making any provision for maintenance of plaintiffs, she has been cheated by the defendant no.1/husband. With these averments, plaintiffs prayed for cancellation of order passed on an application Exhibit 14 moved by original defendants. I have already noted that the order on Exhibit 14 is to the effect that Revenue Officers were restrained from handing over possession as per the Watap Patra in pursuant to the exparte decree.

6 On this backdrop, the learned Appellate court concluded that it is necessary to direct defendant no.1 to pay interim maintenance of Rs.3,000/- per month to each respondent till disposal of the appeal. The learned Appellate Court concluded that if interim maintenance is granted to respondents, the purpose of the application will be served. The learned Appellate Court was swayed by the fact that plaintiff no.1 is the second wife and co-plaintiffs were illegitimate children of defendant no.1. On this backdrop, the orders for maintenance to second wife of defendant no.1 and their illegitimate children came to be passed in a suit for partition and separate possession, and that too, at the interim appellate stage. This was not the relief sought for by the original plaintiffs. There were no pleadings in respect of award of maintenance nor defendants were asked to meet out a case for grant of maintenance. The relief, as granted by the learned Appellate Court, at interim stage, was beyond the scope of its powers and outside the pleadings of parties. The learned counsel for petitioners in Writ Petition No.8441 of 2016/original

defendants rightly pointed out judgment in the matter of **Manohar Lal (D) by Lrs. (supra)** wherein in paragraph 29, it is held thus :

“29 In **Messrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar AIR 1953 SC 235**, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

7 In the result, the following order :

ORDER

- i) Writ Petition No.8441 of 2016 is allowed.
- ii) The impugned order dated 5th January 2016 passed below Exhibit 23 in Miscellaneous Civil Application No.56 of 2015 is quashed and set aside.

- iii) Writ Petition No.13096 of 2016 is dismissed.
- iv) However, the learned Appellate Court is directed to expedite hearing of the civil appeal challenging the exparte decree of partition.
- v) Needless to mention that observation made in this judgment are prima facie and shall have no bearing on the final disposal of the civil appeal.

(A. M. BADAR, J.)