

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO. 24212 OF 2019

Rajshekhhar Shankar Chandode and anr. .. Petitioners
Vs.
Anita Hanumant Chandode and ors. .. Respondents

Mr.Drupad S.Patil, for the Petitioners.

CORAM : M.S.KARNIK, J.

DATE :06th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. The Petitioners are original defendants No. 3 & 4. Respondents No. 1 & 2 are the original plaintiffs. The plaintiffs had filed the Suit for partition and separate possession. The plaintiff is the wife of Hanumant Chandode. Upon the death of Hanumant, plaintiff No.1 filed Suit for partition. Defendant No.1 Shankar Hanumant Chandode is the father-in-law of plaintiff No.1. Defendant No.2 is the mother-in-law of plaintiff No.1.

Defendants No.3 & 4 are the brothers-in-law. Defendant No.1 died on 05/08/2016.

3. The plaintiffs had filed an application claiming interim maintenance. The trial Court initially granted interim maintenance Rs.1,000/- each to the plaintiffs from 14/06/2013. This Court enhanced the maintenance to Rs. 2,000/- per month to be paid to each of the plaintiffs.

4. The trial Court had directed the defendant No.1 -father-in-law to pay maintenance. It is the contention of the learned Counsel for the petitioners, relying on Section 19 of the Hindu Adoptions and Maintenance Act, 1956 that a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. It is his contention therefore that the trial Court by the impugned order has committed an error in directing the petitioners – defendants No.3 & 4 to pay the maintenance. He would submit that not only the trial Court has

directed the petitioners to pay maintenance from the date of the death of their father, but the trial Court has also directed the petitioners to pay arrears. He would submit that the responsibility of maintaining the plaintiffs was that of defendant No.1. According to him, even the law does not provide that the plaintiffs are to be maintained by the petitioners who are her brothers in law. He would therefore contend that even assuming that the petitioners are required to maintain the plaintiffs upon demise of defendant No.1 in capacity of the petitioners being heirs of defendant No.1, the petitioners surely cannot be saddled with liability of payment of arrears prior to the death of defendant No.1.

5. I have gone through the order passed by the trial Court. The plaintiffs have filed the Suit for partition and separate possession. The properties are in possession of the defendants No.3 & 4 from which they are deriving income. When initially order was passed, the same was against the defendant No.1 i.e. father-in-law to pay maintenance of

Rs.2,000/- per month each to the plaintiffs. However, upon death of defendant No.1 on 05/08/2016, as the maintenance amount as ordered by this Court was not paid, an application was moved by the plaintiffs for claiming maintenance and arrears.

6. The only objection of the learned Counsel for the petitioners is regarding payment of arrears for the period prior to the death of defendant No.1. The petitioners are in possession of the properties of which the partition is sought in the Suit filed by plaintiffs. Defendant No.1 was directed by the trial Court to pay interim maintenance during the pendency of the Suit. Defendant No.1 died on 05/08/2016. The liability to pay interim maintenance thereafter would be on the legal heirs of defendant No.1 which the petitioners say that they in fact are paying. In my opinion, considering the facts of the present case, even insofar as the arrears for the period prior to the death of defendant No.1 are concerned, defendants No.3 & 4 being in possession of the suit property of which partition is sought and

in their capacity being legal heirs of defendant No.1, it is not open for them to contend that they are not liable to pay arrears of maintenance due and payable by defendant No.1 during his lifetime. The defendants No.3 & 4 are deriving income from the property. I have gone through the reasons recorded by the trial Court. I see no reason to interfere with the order passed by the trial Court. Present Petition is therefore dismissed.

7. Learned Counsel for the petitioners at this stage would submit that the financial condition of the petitioners is not very sound. He prays for some time to pay arrears. Considering the request made, the arrears as directed by the trial Court to be paid within a period of 3 months from today.

(M.S.KARNIK, J.)