

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.7040/2016

(Ramji Damla Jadhav Vs. Smt. Sangita Gajanan Jadhav and another)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. Gaurav Singh Sengar, Advocate for the petitioner.
 Mr. J.S.Wankhede, Advocate for respondent nos.1 and 2.

CORAM : Manish Pitale, J.
DATED : March 14, 2019.

By this Writ Petition, the petitioner (original defendant no.1) has challenged order dated 14.03.2016 passed by the Court of Civil Judge Junior Division, Mahagaon (trial Court), whereby application for interim maintenance (Ex.30) filed by the respondent under Section 151 of the Code of Civil Procedure, 1908 (CPC) stood allowed.

2. The respondents herein have filed Regular Civil Suit No.27/2014 for partition and separate possession against the petitioner and other defendants. The case of respondent no.1 is that she is the daughter-in-law of the petitioner and that her husband has died and further that she has right to claim partition in the suit property. By way of said application at Ex. 30 the respondents claimed that during the pendency of the aforesaid partition suit, they are entitled to payment of interim maintenance @ Rs.10,000/- per month from the petitioner. By the impugned order, the trial Court has held that the respondents are entitled for direction under Section 151 of CPC to the petitioner for payment

of maintenance of Rs.2000/- per month. A rider has been added by the trial Court in the impugned order that such payment of interim maintenance would be subject to final out-come of Civil Suit and in case, suit stands dismissed, the petitioner would be entitled for restitution.

3. The main contention raised in the present writ petition is that the said application filed by the respondents under Section 151 of CPC ought not to have been entertained by the trial Court and that when jurisdiction exercised by the trial Court was under a misconception of law, the impugned order was rendered unsustainable. It was submitted that in a suit for partition and separate possession, such an application for interim maintenance could never be contemplated and that the respondents were free to invoke the provisions of specific statutes, including the Hindu Adoption and Maintenance Act, 1956, particularly Section 19 thereof, to seek maintenance from the petitioner.

4. The respondents have opposed the said contention raised on behalf of the petitioner by contending that power under Section 151 of CPC could certainly be exercised by the trial Court in the facts and circumstances of the present case and that sufficient care had been taken by the trial Court by directing that if the suit was finally dismissed, the petitioner would be entitled to restitution. In view of the same, it was submitted that no prejudice was caused to the petitioner

by trial Court passing the impugned order.

5. On the question as to the scope of exercise of power by the Court under Section 151 of CPC, in the case of *State of Uttar Pradesh and others Vs. Roshan Singh (Dead by LRs. and others : (2008) 2 SCC 488*, the Hon'ble Supreme has held as follows:-

“7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the Court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the Court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent powers of the Court are not to be used for the benefit of a litigant who has remedy under the Code of Civil Procedure. Similar is the position vis-a-vis other statutes.

8. The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the Court are in addition to the powers specifically conferred to it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the Court power of making such orders as may be necessary for the ends of justice of the Court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be

claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless less under the Act.”

6. The said position of law makes it clear that power and jurisdiction under Section 151 of CPC can be exercised by the Court when there is no alternative provision available in the CPC for the applicant to claim the relief that has been claimed in the present case and when there is no provision prohibiting exercise of such power by the Court. It has been observed that the same position would apply to other statutes as well. Applying the said position to the facts of the present case, it becomes clear that the respondents could not have applied under any other provisions of the CPC for the relief of interim maintenance claimed by them. Even under Section 19 of the Hindu Adoption and Maintenance Act, 1956, the respondents could not have obtained order of interim maintenance and in a suit for partition and separate possession the respondents seek to assert their right to share in the suit property. If the suit stands allowed and the right of the respondents in a share to the suit property is upheld, there can be said to be nothing wrong in the grant of interim maintenance as granted by the trial Court. It is only if the plea raised on behalf of the petitioner that the suit property is self-acquired property is upheld that the question of justification for an order of interim maintenance would arise.

7. But, the trial Court in the present case has been cautious enough to take care of the said contingency by specifically directing that the direction to pay maintenance of Rs.2000/- per month by the petitioner to the respondents in the present case, shall be subject to the final outcome of the suit and if the suit is dismissed, the petitioner would be entitled for restitution.

8. Considering the facts and circumstances of the present case wherein a widow daughter-in-law is seeking interim maintenance from her father-in-law for herself and her minor daughter, in a pending suit for partition and separate possession, it appears that the trial Court has not committed any error in invoking power under Section 151 of CPC to pass the impugned order. This Court while exercising writ jurisdiction does not deem it fit to interfere with the impugned order passed by the trial Court.

9. Hence, the writ petition is dismissed.

JUDGE

ambulkar