

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 CRIMINAL APPLICATION NO. 213 OF 2021

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| 1. | Ravindra Pralhad Pandeji,
Age-42 years, Occu-Service,
R/o. Dombavili (East), Dist. Thane | ...APPLICANTS
(Ori. Resp No. 1 to 4) |
| 2. | Vijayalaxmi Ashok Pande,
Age-61 Years, Occu-Household,
R/o. Seema Vaykos, E-26/8,
N-11, Nar Saubhagya Mangal Karyalay,
Mayur Nagar, Hudco, Aurangabad | |
| 3. | Rina Kishor Sharma,
Age-36 years, Occu-Household, | |
| 4. | Kishor Ramesh Sharma,
Age-40 years, Occu-Business, | |
- Both 3 and 4 R/o. Flat No. 504, 'F' Building,
Laxmi Vilas Society, Mukund Nagar,
At Post, Tq. Dist. Pune

VERSUS

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| 1. | The State of Maharashtra
Through Sillod Police Station,
Tq. Sillod, Dist. Aurangabad
(Respondent No.1 is deleted as per
order dated 03-02-2021.) | ...RESPONDENTS |
| 2. | Jayashree Rahul Pande,
@ Jayashree Khagendrachandra Sarkar
Age-32 years, Occu-Household,
R/o. C/o. Avinash Tayade, Shikshak Colony,
Shivaji Nagar, Sillod, Tq. Sillod, Dist. Aurangabad
Mob No. 7431948066 | |

Mr. Sandeep B. Rajebhosale, Advocate for the applicants
Mrs. Mayuri G. Kasturkar, Advocate for the respondent No.2
(appointed)

CORAM : SURENDRA P. TAVADE, J.
RESERVED ON : 12-08-2021
PRONOUNCED ON : 20-08-2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties the application is taken up for final hearing.

2. The applicants are praying for quashing of domestic violence proceedings i.e. Criminal Misc. Application No. 796 of 2020 filed under Section 12(1) of the Protection of Women From Domestic Violence Act pending before the JMFC, Sillod, Dist. Aurangabad.

3. Respondent No.2 claimed herself to be the wife of deceased Rahul. She claims that she married with Rahul on 10-01-2016. On 06-06-2020, Rahul committed suicide. He was serving as Talathi in Tahasil Sillod at Mauje Dongargaon, Tq. Sillod, Dist. Aurangabad. It is contended by respondent No.2 that after death of husband, she was driven out of the shared house hold by the applicants. Similarly, the petitioner No.2 has alienated ancestral land of deceased Rahul to the petitioner No.3. It is contended that the applicants have caused mental torture and harassment to the respondent No.2. Accordingly, the petition came to be filed against

the applicants.

4. It is contended on behalf of the applicants that the respondent No.2 was not legally wedded wife of deceased Rahul. It is contended that deceased Rahul was married to Yugandhara @ Vaishali. The divorce between the Rahul and Yugandhara took place on 06-09-2017. It is contended that the alleged marriage of respondent No.2 with deceased Rahul was void. Therefore, she cannot claim relief against the applicants. It is also contended that the applicants were never resided with respondent No.2 and deceased Rahul at any point of time.

5. On behalf of the applicants it is contended that there was no domestic relation between the respondent No.2 and deceased Rahul. Similarly, they never residing in shared house hold. To substantiate their point, the learned counsel for the applicants relied on the ratio laid down in the case of Reshma Begum W/o. Gajanfar Kazi Vs The State of Maharashtra and ors in Criminal Revision Application No. 82 of 2017 wherein this court has relied on the ratio laid down in the case of Velusamy Vs D. Patchaiammal reported in 2010 (3) Bom.C.R. (Cri) 764 (SC).

6. In order to appreciate the contentions of the applicants definition of domestic relation is required to be re-produced.

‘domestic relationship’ means a relationship between two

persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

7. It is important to note that interpretation put on the definition and particularly the words 'relationship in the nature of marriage' by the Supreme Court in the case of Velusamy (supra) to mean.

[a] The couple must hold themselves out to society as being akin to spouses.

[b] They must be of legal age of marry.

[c] They must be otherwise qualified to enter into a legal marriage, including being unmarried.

[d] They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.'

8. In the present case, it is the basic case of the respondent No.2 that she was residing with deceased Rahul as his wife since 2016. Respondent No.2 has produced on record her marriage invitation card which shows that her marriage took place with the deceased Rahul on 10-01-2016. Admittedly, civil court passed decree of divorce between first wife Yugandhara and Rahul on 06-09-2017. So, prima-facie, on 10-01-2016 the first marriage of deceased Rahul was in subsisting. Thus, marriage of respondent

No.2 and deceased Rahul can be called as void marriage.

9. Be that as it may, the respondent No.2 has produced on record her Adhar Card which was issued on 26-05-2017. She has also produced on record her medical treatment from the year 2016 to 2019. In all these documents she has shown as wife of Rahul. Admittedly, deceased Rahul gave divorce to his first wife on 06-09-2017, even it appears that since prior to divorce the respondent No.2 was residing with deceased Rahul at Sillod. So, it can be said that after divorce the respondent No.2 was in live-in-relation with Rahul. There are specific allegations made against the applicant Nos. 2 and 3. Respondent No.2 has filed on record the mutation entries and 7/12 extracts which show that applicant No.2 had alienated agricultural land in favour of the applicant No.3. It is the case of the respondent No.2 that the said lands were ancestral lands of deceased Rahul. She also alleged that she was dispossessed from the shared household. All these allegations are required to be proved by her before the trial court.

10. The present application was filed on the ground that there was no domestic relationship between the respondent No.2 and deceased Rahul. But, it appears that after divorce of deceased, deceased Rahul was staying with respondent No.2 and they were having domestic relationship. Therefore, the application filed under Section 12(1) of the Protection of Women From Domestic Violence Act is maintainable. With this, I hold that, there is no merit in the

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application. Hence, I pass the following order.

ORDER

- i. Rule is discharged.
- ii. The criminal application is dismissed.

[SURENDRA P. TAVADE, J.]

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