

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

**WRIT PETITION NO.6888 OF 2021**

1. Kanchanbai Balkisan Mundada  
Age : 72 years, Occ: Business,  
R/o: House No.127, Polan Peth,  
Jalgaon.
2. Radhika Radheshyam Mundada  
Age : 38 years, Occu: Business,  
R/o. As above.
3. Ritesh Radheshyam Mundada  
Age : 19 years, Occu: Education,  
R/o. As above
4. Kausalyabai Ramkisan Mundada  
Age : 65 years, Occu: Household,  
R/o. As above
5. Sunil Ramkisan Mundada  
Age : 52 years, Occu: Business,  
R/o. As above
6. Jitendra Ramkisan Mundada  
Age : 46 years, Occu: Business,  
R/o. As above.
7. Bharat Ramkisan Mundada  
Age : 44 years, Occu: Business,  
R/o. As above
8. Suchita Gopal Mal  
Age : 48 years, Occu: Household,  
R/o. Lakhpatti Galli, Shegaon,  
Taluka and District Buldhana
9. Manisha Rajesh Baser  
Age : 47 years, Occu: Household,  
R/o. Plot No.83, Yashwantnagar,  
Jalgaon.

... **PETITIONERS**  
(Org. Defendant Nos. 1  
to 9/Appellants)

**VERSUS**

1. Mangalabai Kachrual Mundada  
Since deceased
2. Manjula Kachrual Mundada  
Age : 41 years, Lawyer,  
R/o. House No.127, Polan Peth,  
Jalgaon.

3. Saroj Kachrual Mundada  
Age : 28 years, Occ: Nil,  
R/o. As above.

... RESPONDENTS

...  
Advocate for Petitioners : Mr. Satyajit S. Bora  
Advocate for Respondent Nos.2 and 3 : Mr. Datta A. Madake  
...

**CORAM : MANGESH S. PATIL, J.**

**DATE : 25.08.2021**

**ORAL JUDGMENT :**

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Madake waives service for the respondent Nos. 2 and 3. The respondent No.1 is dead even before filing of this Writ Petition. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. After the suit of the deceased respondent No.1 for general partition and possession was decreed and the decree was challenged in Appeal, the respondents moved a joint Application (Exhibit-11). They averred that because of the demise of the husband and son of the deceased respondent No.1 there was nobody to maintain the family of the respondents. They have been held entitled to receive 1/3 share in all the suit properties. They were hand to mouth, whereas the petitioners were in possession of the shop premises and have been earning sumptuous rent. Therefore they prayed for interim maintenance @ 25000/- per head.

3. The petitioners opposed the Application and denied that the

respondents were in need of some money for their maintenance. They further contended that the respondents were staying in the third floor of the same building, the suit property. The respondent Nos. 2 and 3 are major and have source of income and it was the responsibility of the respondent Nos. 2 and 3 to maintain the deceased respondent No.1.

4. After hearing both the sides by the impugned order, the learned Judge allowed the Application and directed the petitioners to pay maintenance to each of the respondent @ Rs.3000/- per month per head.

5. The learned advocate for the petitioners would submit that though the learned Judge has passed the impugned order under the purported exercise of the powers under Section 22 of the Hindu Adoption and Maintenance Act, the provision is not applicable to the respondent's case. He would therefore submit that there is absolutely no provision which would entitle the respondents to claim maintenance in his partition suit. They have claimed and have been awarded *mesne profit* and if the petitioners fail the respondents would get those *mesne profit* at an appropriate stage. He would further submit that apart from such legal issue, the Application (Exhibit-11) moved by the respondents is absolutely devoid of any averments touching their inability to maintain the respondent Nos. 2 and 3. There is absolutely no whisper as to what they have been doing. One of them is a lawyer. Both of them are in their thirties and in the absence of any such averment and a specific prayer claiming maintenance even for them after demise of respondent No.1, the learned Judge ought to

have considered these aspects but has proceeded to ignore it and has passed the impugned order.

6. The learned advocate for the respondent Nos. 2 and 3 submits that, since a suit for partition has been decreed in favour of the deceased respondent No.1 and she has been awarded *mesne profit*, the petitioners who are holding possession over the joint family property and particularly earning the rent from the shops of the ground floor, they are under not only legal but even a moral obligation to pay the respondents some share of rent during pendency of the Appeal. He would submit that even the respondent Nos. 2 and 3 are in need of money. They do not have any source of income and therefore there is no illegality in the order.

7. The learned advocate would rely upon the decision in the **Sushilabai Chhotelal Gupta Vs. Ramcharan Hanumanprasad Vaishya and Ors.; 1976 Mh.L.J 82**. He submits that the liability of the petitioners to pay also arises from the fact of their holding possession of the suit property in which the respondent have been granted a share.

8. I have considered the rival submissions and the reasoning giving by the learned Judge. As the matter now stands, the respondent No.1 is dead and the request is now to be considered *qua* the respondent Nos. 2 and 3.

9. A bare perusal of the Application (Exhibit-11) shows that all the three respondents have signed the Application. However, there is absolutely no whisper in the Application either disclosing occupation or income of the

respondent Nos. 2 and 3 or demonstrating their need. The Application has been drafted to demonstrate as to how it is the respondent No.1 who was in need of the maintenance. Admittedly, the respondent Nos. 2 and 3 are women in their thirties one of them is stated to be a lawyer albeit the other one's occupation is stated to be nil. In the absence of specific pleading demonstrating their need to have the maintenance, one cannot comprehend as to how the learned Judge could proceed to decide the Application in their favour.

10. Irrespective of the fact as to if Section 22 of the Hindu Adoption and maintenance Act is applicable to the facts and circumstances of the case, the very request for maintenance was made by the deceased respondent No.1 and therefore it ought to have been considered only to her extent. Ignoring such state of affairs, the learned Judge has proceeded on the line as if he was called upon to decide the Application strictly in view of the observations of this Court in the case of **Sushilabai Chhotelal Gupta** (supra) in paragraph No.5 which recognize a liability to maintain on account of holding of possession of property. That was not the claim in Application (Exhibit-11) and should not have been treated and considered in the light of such principles.

11. Again, there is absolutely no material to reveal as to on what basis the learned Judge could arrive at the income of the petitioners and need of the respondents. Although there could be some leeway to draw some inference when there is no concrete evidence, but there has to be

something to draw the inferences which the learned Judge has drawn as regards the income of the petitioners and the need of the respondents.

12. Considering the aforementioned facts and circumstances, the order passed by the learned Judge is illegal and is liable to be quashed and set aside.

13. The Writ Petition is allowed. The impugned order is quashed and set aside.

14. The Rule is made absolute.

**(MANGESH S. PATIL, J.)**

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