

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1550 OF 2020

1. Baban Bhagwat Jape,
Age 63 years, Occu. Agri.,
2. Bhaskar Bhagwat Jape,
Age 61 years, Occu. Agri.,
3. Subhash Bhagwat Jape,
Age 60 years, Occu. Agri.,
All R/o. Savli Vihir (Bk), Taluka Rahata,
District Ahmednagar.
4. Sushila w/o. Digambar Chaudhari,
Age 56 years, Occu. Household,
R/o. Shingve, Taluka Rahata,
District Ahmednagar

.. Petitioners
(Original Defendants
no.1 to 4)

Versus

Sindhubai Popat Jape,
Age 58 years, Occu. Agri. & Household,
R/o. Savli Vihir (Bk), Taluka Rahata,
District Ahmednagar
Now R/o. At Post Kangoni,
Taluka Vaijapur, District Aurangabad.

.. Respondent
(Original Plaintiff)

...

Mr. Sachin S. Deshmukh, Advocate for Petitioners
Mr. V. R. Dhorde, Advocate for Respondent

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned Advocates for both parties.

2. This petition is directed against the order dated 14-11-2019

passed by the learned 2nd Joint Civil Judge, Junior Division, Rahata, District Ahmednagar, below Exhibit-43 in Regular Civil Suit No. 506 of 2015, thereby allowing the application filed by respondent-original plaintiff and awarding *pendent lite* maintenance @ Rs.5000/- per month to her.

3. The Regular Civil Suit is filed by the plaintiff against the petitioners-defendants claiming that her marriage took place with Popat, the brother of defendants on 20th May, 1972, as per Hindu rites and Religion. Thereafter, she went for cohabitation to her in-laws. On 07-08-1979, her husband Popat expired. Thereafter, father-in-law Bhagwat gave suit property mentioned in clause 1(d) of the plaint to the plaintiff and she was cultivating the said land, however, she was driven out by the defendants from matrimonial home. On 26-04-1999, her father-in-law Bhagwat expired. Though, the defendants ought to have included the name of plaintiff to the properties, the same was not done. In the year 2007, the plaintiff gave application to record her name being legal heir as widow (wife) of deceased Popat. The defendants did not permit that to happen. The defendants got their names entered in the revenue records and excluded the plaintiff. She, therefore, filed the suit seeking partition and separate possession of the suit properties and also sought maintenance @ Rs.10,000/- per month. Along with said suit, interim maintenance application (Exhibit-43)

was filed by the plaintiff.

4. Defendants appeared and resisted the suit as well as the interim application, by filing written statement. It is contended that the plaintiff is not legally wedded wife of deceased Popat and, therefore, she is not entitled to claim maintenance, partition and separate possession. The trial Court, after hearing both the sides, partly allowed the application (Exhibit-43) and granted Rs.5000/- per month interim maintenance to the plaintiff. This order is impugned in the present petition.

5. I have given thoughtful consideration to the rival submissions of both the parties.

6. The Trial Court, while allowing the application (Exhibit-43), has taken into consideration the facts that the respondent-plaintiff has filed on record copy of Aadhar card, which was held *prima facie* proof to consider the interim maintenance application. Taking into consideration the legal position that widowed daughter-in-law can claim maintenance from the property of husband and the heirs of father-in-law are under legal obligation to maintain his son's widow out of the inherited estate, and, that the father-in-law was under moral obligation to maintain his widowed daughter in law, the trial Court allowed the application (Exhibit-43).

7. It is also noted in the impugned order that the petitioners-original defendants are cultivating the lands, 7/12 extracts of which are placed on record. It is also a matter of record that respondent-plaintiff has filed an application to the Tahsildar to record her name as wife/widow of deceased Popat in the revenue record being wife of deceased Popat, which is placed on record at Exhibit-B collectively, (Page-24).

8. Taking into consideration the record of the matter and the reasons assigned by the trial Court, no illegality or perversity is found in the order impugned in the writ petition. No case is made out by the petitioners to exercise extra-ordinary writ jurisdiction. The writ petition is, therefore, dismissed. Rule is discharged. No order as to costs.

. However, taking into consideration the fact that the suit is of the year 2015, the trial Court is directed to expedite the suit and dispose of the same in any case within a period of six months from the date of receipt of writ of this order.

. It is made clear that the observations made here-in-above are *prima facie* in nature and shall not influence the learned Trial Court while deciding the suit.

(NITIN B. SURYAWANSHI)
JUDGE