

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 576 OF 2018
WITH
INTERIM APPLICATION NO.1480 OF 2019**

Raghunath Anna Patil & Ors. Petitioner

Vs.

Suvarna Rajaram Patil & Ors. Respondents

Mr. Satyavrut Joshi for Petitioner.

Mr. Kalpesh U. Patil for Respondent Nos. 1 to 3.

Coram : NITIN W. SAMBRE, J.

Date : 10TH FEBRUARY, 2021

P.C.:

1. In a suit for partition, the Respondent/Plaintiff moved an application for grant of interim maintenance, which came to be allowed vide order impugned dated 17th August, 2011 passed by the Joint Civil Judge, Junior Division, Islampur, thereby directing the Petitioner-Defendant to pay interim maintenance of Rs.1,500/- per month.

2. Mr. Joshi, learned counsel for the Petitioner by drawing support from the judgment of Apex Court in the matters of Sudeep

Chaudhary Vs. Radha Chaudhary, reported in (1997) 11 Supreme Court Cases, page 286 and Sanjay Pundlikrao Niranjane Vs. Swati Sanjay Niranjane, reported in 2005(2) Bombay C.R. (Cri.) page 905, would urge that if the parallel proceedings for maintenance are pending, the amount of maintenance awarded by the Court needs to be adjusted.

3. Learned counsel for the Respondent Nos. 1 to 3 / original Plaintiffs supports the order impugned.

4. Considered rival submissions.

5. I am informed that the maintenance granted under Section 125 Cr.P.C. came to be enhanced to Rs.3,000/- in the year 2019.

6. As far as impugned order is concerned, while granting interim maintenance of Rs.1,500/-, the trial Court was sensitive to the fact that in maintenance Proceeding No.149 of 2000, the maintenance was awarded to Rs.1,000/- and enhancement of same was sought.

7. Considering the fact that the claimants of the maintenance i.e. in the plaintiffs in the partition suit are wife and daughter, award of

maintenance of Rs.1,500/- per month in the proceedings is very much justified and does not call for any interference particularly having regard to the total holding of the Petitioner which is subject matter of the suit.

8. The contentions that, the maintenance ought not to have been awarded in a partition suit is also liable to be rejected. The aforesaid issue is no more res-integra, as it has been held that in a suit for partition, it is always open for the party dependent who has no independent source of income and who is dependent on karta can claim maintenance. In the case in hand, the relation between the parties, the Petitioner and Respondent are that of husband and wife with children. Husband is facing a suit for partition initiated by dependent wife and children. The fact remains that the Petitioner is enjoying the suit property over which the Respondents have every right in view of their relation with the Petitioner-Plaintiff. It is bounden duty of the Petitioners to maintain the dependents like that of wife and children. That being so, no case for interference is made out. The petition fails. Dismissed.

9. The Respondents/Original Applicants are permitted to withdraw the amount, if any, deposited by the Petitioner/original Respondent before the trial Court.

10. In view of dismissal of the Writ Petition, Interim Application does not survive, the same is accordingly disposed of.

(NITIN W. SAMBRE, J.)