

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

WRIT PETITION NO.5449 OF 2019

**SOW. ASHABAI FAKIRCHAND DOKE
VERSUS
FAKIRCHAND DAMODHAR DOKE AND ANOTHER**

...
Advocate for Petitioners : Mr. Pandurang M. Gaikawad
AGP for Respondents – State : Mr. S. W. Munde
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 05th JULY, 2022

PER COURT :

1. The petitioner is aggrieved by the order passed by learned 3rd Joint Civil Judge Junior Division, Paithan, below Exhibit-48 in R.C.S. No.221/2007, whereby the application filed by defendant No.2 under Rule 11(d) of Order VII of the Code of Civil Procedure for rejection of the plaint against him, is allowed.
2. R.C.S. No.221/2007 is filed by the petitioner wife against respondent No.1 husband seeking maintenance under Section 19 of the Hindu Adoptions and Maintenance Act, 1956. In the said suit, by way of interim injunction trial Court directed the husband not to alienate suit property mentioned in the plaint, by order dated 01/01/2008.
3. It is the case of petitioner wife that so as to deprive

the wife from claiming maintenance from the suit property, respondent No.1 husband sold out the property to defendant No.2/respondent No.2, during pendency of the suit on 05/02/2008, though interim injunction was in operation. The petitioner, therefore, amended the plaint and added defendant No.2/respondent No.2 in the suit.

4. Defendant No.2 after appearing in the suit filed application Exhibit-48 under Rule 11(d) of Order VII of the Code of Civil Procedure for rejection of plaint. Trial Court has allowed the said application and rejected suit against defendant No.2/respondent No.2. Hence, the present petition.

5. Heard learned advocate for petitioner. He has vehemently submitted that in spite of the fact that injunction was operating, respondent No.1/defendant No.1 has illegally sold the property to defendant No.2 and therefore, he is necessary party and was rightly added as defendant No.2. Hence, the suit is maintainable against him.

6. By relying on Section 18, the trial Court has allowed application filed by respondent No.2 and rejected suit against him rightly so. Under Section 18 maintenance can only be

sought against husband. The trial Court has also referred Section 19.

7. The trial Court has rightly interpreted provisions of Section 18 and has given proper reasons while dismissing the suit against defendant No.2. No illegality or perversity is found in the order impugned in the present petition. The writ petition is, therefore, dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)

SVH