

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

WRIT PETITION NO.3764 OF 2021

**SUBHADRA BAI VIKRAM PATIL AND OTHERS
VERSUS
JANVI JITENDRA PATIL AND ANOTHER**

...

Advocate for Petitioners : Mr. Ujwal S. Patil
Advocate for Respondent No.2 : Mr. Lalitkumar S. Mahajan

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th JULY, 2022

PER COURT :

1. The petitioners are aggrieved by the order dated 01/08/2019, passed by the learned Joint Civil Judge, Junior Division, Shirpur below Exhibit-20 in Regular Civil Suit No. 118/2015, thereby awarding maintenance at the rate of Rs.3,000/- each to the respondents.

2. Respondents No. 1 and 2 filed R.C.S. No.118/2015 against the petitioners claiming 1/3rd share and partition and separate possession of the suit properties. In the suit the petitioners/original defendants appeared and resisted claim of the respondents/plaintiffs. During the course of the suit, application Exhibit-20 is filed under Section 151 of the Code of Civil Procedure claiming interim maintenance at the rate of Rs.10,000/- each for respondents No. 1 and 2. The said application was opposed by the

petitioners and the trial Court has awarded amount of Rs.3,000/- each to the respondents. Petitioners are aggrieved by this order.

3. Heard Mr. Ujwal S. Patil, learned advocate for petitioners and Mr. Lalitkumar S. Mahajan, learned advocate for respondents.

4. It is a matter of record that, in the suit 7 agricultural lands and 2 residential houses are described as the suit properties. In application Exhibit-20 respondents have accepted that one agricultural land is in their possession, however, it is claimed that the petitioners do not permit them to cultivate the said land. The relationship between the parties is not disputed. Taking into consideration these aspects, the trial Court, in my view, was justified in awarding maintenance at the rate of Rs.3,000/- each to the respondents.

5. Learned advocate for petitioners submits that in view of availability of alternate remedy to the respondents of claiming maintenance under Section 125 of the Code of Criminal Procedure or under other provisions, the trial Court was not justified in exercising its jurisdiction and allowing the application filed by the respondents under Section 151. In support of his contention he has relied on *State of Uttar Pradesh and Others Vs. Roshan Singh*

(Dead) By LRs. And Others, (2008)2 SCC 488. In this judgment the Hon'ble Supreme Court has held that the object of Section 151 is to supplement and not to override or evade other express provisions of the Code of Civil Procedure or other statutes. It is held that in view of the remedy of appeal available under Section 13 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, petition under Section 151 of the Code of Civil Procedure challenging the determination of surplus land under Section 12 of the 1960 Act, was held to be not maintainable.

6. Such are not the facts of the present case. In the present case, admittedly, the suit for partition and separate possession and determination of shares of the respondents is filed, wherein they have rightly applied under Section 151 of the Code of Civil Procedure for interim maintenance. This ruling, therefore, would not help the case of the petitioners.

7. Learned advocate for petitioners submits that the respondent No.1 is now major and therefore, she is not entitled for maintenance. The petitioners are at liberty to avail appropriate remedy in that behalf.

8. In the facts and circumstances of the present case, the

trial Court was justified in passing a well reasoned order and awarding maintenance at the rate of Rs.3,000/- to the respondents.

9. No illegality or perversity found in the order impugned in the present petition. Writ petition being devoid of merits, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)

SVH