

Anand

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

WRIT PETITION 4234 OF 2022

Ramesh Sidram Survase & ors. .Petitioners

Vs.

Baban Laxman Survase & ors. .Respondents

Mr. Ajay Nimbalkar i/b. Mr. Bhooshan Mandlik, Advocate,
for the Petitioners

Ms Manisha Devkar, Advocate, for the Respondents

CORAM : ROHIT B. DEO, J.

DATE : 25.07.2022

P. C.

. The Respondent 1 is the original Plaintiff, who preferred Special Civil Suit 88 of 1997 seeking decree of partition and separate possession. The Plaintiff is the widow of Laxman Survase and the Defendants in the suit are her brother-in-laws, step children and the second wife (widow) of the deceased – Laxman Survase.

2. The suit for partition and separate possession is decreed on 21.12.2001.

3. The step sons of Laxman Survase preferred Regular Civil Appeal 121 of 2010. It appears that while the Appeal was filed in the year 2004 alongwith an Application for condonation of delay, the Appeal was registered in 2010 after the delay was condoned.

4. The Plaintiff preferred an Application – Exh. 25 in Regular Civil Appeal 121 of 2010 for maintenance. She stated that her share in the ancestral property is recognized and declared by the preliminary decree and although many years have gone by, she has not received fruits of the decree. She has stated that she is aged 70 years and is not keeping good health and since the Defendants are in possession and have availed the income generated from the ancestral property, they be directed to pay maintenance of Rs. 20,000/- per month for her maintenance.

5. The learned Appellate Court allowed the Application partly and directed the Appellants 1, 3 to 5 and 7 to pay monthly maintenance of Rs. 15,000/- to the Plaintiff

with effect from the date of Application. It is this order which is impugned.

6. The learned Appellate Court noted that the Plaintiff is excluded from the enjoyment of the suit property and the suit is instituted in 1997. The learned Appellate Court then recorded a prima facie finding that the Plaintiff is not in a position to maintain herself, inasmuch as, she has no source of income. The learned Appellate Court held that since the Plaintiff is widow, and she is not in a position to maintain herself, she will have to be paid maintenance by the persons, who admittedly are in possession of the suit properties.

7. Having heard learned counsel for the respective parties, I do not find any error in the order impugned, much less an error warranting interference in writ jurisdiction. The learned counsel for the Plaintiff has invited my attention to the Order dated 04.05.2022 in Civil Writ Petition 5066 of 2022 to buttress the submission that the Plaintiff is entitled to maintenance. Although the learned

counsel for the Petitioners - Defendants has a counter narrative, even dehors the observations of the learned single Judge in Civil Writ Petition 5066 of 2022, I find that a case is made out by the Plaintiff for grant of maintenance pending the decision in Appeal. Judicial notice will have to be taken of the pendency in Courts and the time consumed in final decision of Appeal. The Plaintiff is litigating since 1997. She has succeeded in the trial Court in obtaining a declaration that she is entitled to share in the ancestral property. It is not certain what time will be consumed in the decision in Appeal or in the final decree proceeding. The maintenance directed is not exorbitant in the context of the fact that the Plaintiff is the widow of the deceased Laxman Survase, she is presently aged 74 years, that she claims to be not keeping well and that she has no independent source of income. I see no reason to interfere in writ jurisdiction.

8. The Petition is dismissed.

(ROHIT B. DEO, J.)