

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.880 OF 2021

Sugandha s/o Santosh More

Vs.

Santosh Kundlik More

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Mahesh Rai, Advocate for petitioner.

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/04/2022

1. By an order dated 15.12.2021, a notice for final disposal was issued. The Farad-Sheet dated 15.02.2022 indicates that the respondent sole is served, however, none appears.

2. Heard Mr. Rai, learned counsel for the petitioner.

3. By an order dated 27.12.2006, in Misc. Criminal Application No.111 of 2005, the petitioner was granted maintenance of Rs.500/- per month. By the subsequent order dated 31.10.2018, the learned Judicial Magistrate, First Class, granted enhanced maintenance of Rs.3,000/-, to the applicant/petitioner with effect from the date of the application i.e. from 02.09.2016 and cost of Rs.1,000/-, by holding that the alleged settlement dated 02.06.2009 was not proved on record. That apart, the claim made therein that an area of one acre was

given to the applicant/petitioner for her maintenance, as spelt out from the alleged settlement dated 02.06.2009, was spurious for the reason, that this area of one acre was claimed to belong to the sister of the respondent namely, Kamalbai, who was neither a signatory to the alleged settlement dated 02.06.2009, nor was there any independent document to demonstrate transfer of this land. It was further found that the alleged claim for partition made by the respondent, was in order to avoid the payment of maintenance (page 37). The Revisional Court in revision by the husband/respondent, by the judgment dated 05.02.2020, has set aside the judgment and order of the learned Judicial Magistrate, First Class dated 31.10.2018 enhancing the maintenance to Rs.3,000/- per month and has dismissed the application of the applicant.

4. A perusal of the impugned judgment indicates that the learned Revisional Court has observed that the document dated 02.06.2009 was a notarized document and what was placed on record was a xerox copy which was not exhibited. He however, has relied upon the evidence of the husband to overturn the judgment dated 31.10.2018 by the learned Judicial Magistrate, First Class. A perusal of the evidence of the respondent, placed on record (page 55), indicates that what has been relied upon to oppose the claim for enhancement of maintenance is the alleged agreement

dated 02.06.2009, in which, land of one acre belonging to Kamalbai Kundlik More, the sister of the respondent is claimed to have been given to the applicant/petitioner. However, since the document of settlement has not been proved on record, neither is there any document considered by the learned Revisional Court, to render a finding that the land admeasuring one acre belonging to Kamalbai Kundlik More was indeed transferred in the name of the applicant/petitioner and possession thereof was delivered, the findings rendered in this regard as based merely upon the evidence of the respondent, is clearly not sustainable.

5. Mr. Rai, learned counsel for the petitioner, upon instructions, makes a statement at bar that no such land, much less any land of one acre as claimed in the affidavit-evidence of the respondent (Exh.30 page 55) has been ever given to the applicant/petitioner nor the applicant/petitioner has ever been placed in possession thereof. Since admittedly this land belongs not to the respondent, but to his sister, there ought to have been a document of transfer executed by the sister of the applicant, which is absent. That being the position, the impugned order which is based merely upon the evidence of the respondent, in absence of any document transferring the land to the applicant/petitioner, is clearly not sustainable in law and is accordingly quashed and set aside. The judgment of the learned Judicial Magistrate,

(4)

31.cri.wp.880.2021

First Class, is hereby restored.

6. The Writ Petition is allowed in the aforesaid terms and disposed of accordingly. No costs.

JUDGE

Sarkate