

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

WRIT PETITION NO.2116 OF 2023

**KUSHAWARTA W/O VIKRAM GHATOL
VERSUS
VIKRAM GHANSHAM GHATOL DIED THROUG LRS UTTAM LOBHAI
LONDHE AND OTHERS**

...
Advocate for Petitioner : Mr. Girish K. Naik Thigle
Advocate for Respondents : Mr. D. M. Shinde
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th MARCH, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner challenges the order dated 16/11/2022 passed below Exhibit-28, order dated 29/01/2022 passed below Exhibit-16 and order dated 25/03/2022 passed below Exhibit-21, by the learned Adhoc District Judge, Basmatnagar, in R.C.A. No.19/2015.

2. Petitioner filed R.C.S. No.264/2012 against her husband Vikram Ghansham Ghatol claiming permanent alimony/monthly maintenance allowance from the husband. Further prayer is made for keeping charge of maintenance allowance on the immovable properties of the husband. So also, perpetual injunction is sought of restraining husband from alienating the suit properties to any person and in any manner till they carry charge of maintenance

allowance. Trial Court partly decreed the suit and directed defendant husband to pay monthly maintenance allowance of Rs.2,000/- to the plaintiff wife from the date of suit. Charge of maintenance allowance was kept upon the suit property bearing Gut No.9, admeasuring 97 Acres situated at village Ranjona, Tq. Basmat, Dist. Hingoli. Perpetual injunction was also granted against defendant husband restraining him from alienating suit property till it carries charge of maintenance amount.

3. Being aggrieved by the judgment and decree passed by the trial Court, husband preferred R.C.A. No.19/2015. During the pendency of said appeal, husband expired on 12/10/2019. No legal heirs filed application within limitation period of 90 days. Thereafter, all the respondents filed application claiming to be legal heirs of the husband and prayed that they may be permitted to be brought on record as legal heirs of deceased husband. Said application was allowed by the appellate Court. Being aggrieved by this order, the petitioner filed application Exhibit-28 seeking review of the order passed below Exhibits – 13, 16 and order below Exhibits - 20 and 21, by which respondents were permitted to be brought on record as legal heirs of the husband.

4. Appellate Court after hearing both the parties was pleased to reject the said review application. Hence, the present petition.

5. Having heard learned advocate for petitioner and learned advocate for respondents, it is clear that before passing order below Exhibits- 13, 16, 20 and 21 appellate Court has failed to give opportunity of hearing to the petitioner. Petitioner has serious objections about the status of the respondents as legal heirs of her deceased husband. It is necessary in the interest of justice to give fair opportunity of hearing to the petitioner wife before allowing said applications.

6. Since the impugned order below Exhibit- 13, 16, 20 and 21 is passed without hearing the petitioner on merits, the same cannot be sustained, consequently the impugned order by which prayer for review is rejected by the appellate Court also cannot be sustained.

7. In the result, writ petition is allowed in terms of prayer clause 'B', which reads thus:-

"B. Rule may kindly be made absolute thereby quashing and setting aside the impugned orders below Exhibit-16 dated 29.01.2022, Exhibit-21 dated 25.03.2022 and order below Exhibit- 28 dated 16.11.2022 passed by the learned Adhoc District Judge, Basmatnagar, in RCA No.19/2015 may kindly be quashed and set aside and application at Exhibit-28 may kindly be allowed in the interest of justice."

8. The matter is remanded back to the appellate Court for fresh consideration of applications Exhibit – 16, 21 and 28 on

merits, in accordance with law, after giving opportunity of hearing to all the concerned parties.

9. It is made clear that this Court has not expressed any opinion on the merits of the rival contentions.

(NITIN B. SURYAWANSHI, J.)