

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13540 OF 2023

Shantabai w/o. Sitaram Sulke

Petitioner

.. (Orig. Plaintiff)

Versus

Tanaji Sitaram Sulke and Ors.

.. Respondents

.....

- Ms. Naina Boraste i./by Mr. Girish R. Agrawal, Advocate for Petitioner.
- Mr. Daulat G. Khamkar, Advocate for Respondent No.1.
- Mrs. D. S. Deshmukh, AGP for Respondent No.9 - State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 08, 2024

P.C.:

1. Heard Ms. Boraste, learned Advocate for Petitioner, Mr. Khamkar, learned Advocate for Respondent No.1 and Mrs. Deshmukh, learned AGP for Respondent No.9 – State of Maharashtra.

2. Writ Petition is filed taking exception to the order passed in Application filed below Exhibit-38 in Special Civil Suit No.207 of 2021 which is at Exhibit-D, page No.39 to the Writ Petition. The old Regular Civil Suit number is Suit No.286 of 2019.

3. Suit is filed by Plaintiff seeking partition of suit property to the extent of her one-fourth share in the suit property being ancestral suit property.

4. The only question for decision before me is whether the Plaintiff has valued the suit property to the extent of her share adequately or otherwise.

5. By virtue of the impugned order dated 13.12.2021, the learned Trial Court has directed the Plaintiff to deposit *ad-valorem* Court fee to the extent of her claim in the suit property whereas it is the case of the Plaintiff that she should be exempted from payment of Court fee in respect of her suit claim. Dispute agitated before the learned Trial Court was that the suit claim does not arise out of any matrimonial dispute and as such the Government of Maharashtra notification dated 01.10.1994 read with the further clarificatory notification dated 23.03.2000 would apply. While passing the impugned order the learned Trial Court has referred to and relied upon the following four decisions of the learned Single Judges of this Court:-

- (i) **Shrinivas s/o. Ramnathji Kathod and Ors. V/s. Smt. Savitribai Wd/o. Sureshchandra Kathod and Ors.¹.**
- (ii) **Kailash S/o. Satyanarayan Khandal Vs. Vijaykumar S/o. Satnarayan Khandal & Ors.².**
- (iii) **Smt. Arti wd/o Deepak Kamlakar Vs. Shri. Vijay S/o.**

¹ 2013 (7) ALL MR 138

² 2018 (6) ALL MR 574

Deorao Kamlakar & Ors.³.

(iv) **Girish Kanaiyalal Munshi Vs. Sudha Girish Munshi and Ors.⁴**

6. Based on the interpretation arrived at for the aforementioned two Government Notifications which are delineated in the decisions, the learned Trial Court concluded that the suit proceedings and relief prayed for by the Plaintiff would necessarily require the Plaintiff to pay *ad-valorem* Court fee since she claimed declaration, partition and separate possession and such reliefs would not come within the purview of matrimonial disputes or those arising out of or concerning matrimonial matters and therefore Plaintiff would not be entitled to any exemption from payment of Court fees.

7. Today, when the matter is argued before me Mr. Khamkar, learned Advocate appearing for Respondent No.1 would submit that the two decisions in case of **Kailash S/o. Satyanarayan Khandal Vs. Vijaykumar S/o. Satnarayan Khandal & Ors.** (*second supra*) and decision in the case of **Smt. Arti wd/o Deepak Kamlakar Vs. Shri. Vijay S/o. Deorao Kamlakar & Ors.** (*third supra*) clearly envisage the above position that Plaintiff cannot be exempted from payment of Court fees if she seeks relief of partition as it does not concern any matrimonial dispute.

³ 2019 (3) ALL MR 612

⁴ 2008 (110) Bom.LR 1524.

8. Ms. Boraste would however disagree and in support of Petitioner would refer to and rely upon the following decisions:-

- (i) **Manoramabai Keshav Joshi V/s. Arun Keshav Joshi and another.⁵**
- (ii) **Ramila Rajnikant Kilachand V/s. Harsh Rajnikanth Kilachand & Ors.⁶**
- (iii) **Dilip Khushalchand (Srisrimal) Jain and Ors. V. Hardik Deepakbhai Ramani and Ors.⁷**

9. Ms. Boraste would submit that the decision of the learned Single Judge in the case of **Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & Ors.** (*fifth supra*) has been followed in the case of **Manoramabai Keshav Joshi V/s. Arun Keshav Joshi and another.** (*sixth supra*). While drawing my attention to the said decisions, she would submit that the learned Single Judge of this Court has undertaken an elaborate exercise of comparing various decisions passed by this Court with respect to interpretation of the Government notification dated 01.10.1994 followed by clarificatory notification dated 23.03.2000 and interpreted the words 'property disputes arising out of and concerning, matrimonial matters, and the policy thereunder concerning property disputes relating to paternal property'.

⁵ 2008 (1) Mh.L.J.905

⁶ S(Lodg.)No.1355 of 2004 decided on 19.07.2004

⁷ AIR Online 200 BOM 991

10. I have perused the said decisions. It is seen that in that case, the Plaintiff therein had sought partition of immovable properties to the extent of her share in the said properties *qua* the Defendants. She was a widow and heir of the original co-owner / joint owner of ancestral property. This Court after analysing several decisions summarised the position as to what would be covered by the term ‘matrimonial matters’ in the twin Government Notifications and the interpretation and interplay of the expression “..pertaining to... matrimonial matters...” being an expression of expansion having a wide amplitude and not to be construed as an expression of contraction to be viewed literally.

11. While doing so the learned Single Judge has also considered the provisions of the Family Courts Act, 1984 which would include within its import, cases not just of divorce, judicial separation, annulment of marriage, interim maintenance, alimony, custody of children, maintenance envisaged by marriage laws but matters concerning property rights which arise out of matrimonial relationship. A partition claim would naturally arise out of the matrimonial relationship.

12. In reference to the above context, the learned Single Judge interpreted the terms in the context of relationship after marriage and *qua* a family and interpreted the said terms in a nature beneficial and

intended to confer right on the weaker section (wife / widow seeking partition) so as to remove an obstacle on that weaker section and give an opportunity to seek redressal.

13. This Court held that if two interpretations are reasonably possible then one which is in favour of women's right to seek remedy will have to be preferred rather than denying her an opportunity at the threshold. So also is the case in the present case before me.

14. The benefit sought i.e. share in property through partition in the present case is absolutely identical to the decision in the case of **Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & Ors.** (*fifth supra*). Plaintiff has come to the Court for ascertainment of her right to the extent of 25% i.e. one-fourth share derivated to her through her husband from and in respect of ancestral property. She claims ascertainment of share and upon such ascertainment to grant to her further partition of the assets and properties by *metes and bounds*. Thus it is a clear case where on account of matrimonial relationship, Plaintiff is ascertaining her right in the properties of her deceased husband to the extent of one-fourth share that would accrue to him and devolve upon him either in terms of intestate succession or otherwise by testamentary disposition.

15. Hence this will have to be construed as a case of a woman beneficiary coming to the Court as litigant for seeking her

share in the estate of her deceased husband which is denied to her by the family members of her husband's family and in that view of the matter, I am inclined to accept the reasoned decision of the learned Single Judge (Coram : S. C. Dharmadhikari, J.) in the case of **Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & Ors.** (*fifth supra*) in the facts and circumstances of the present case.

16. In my view, the present case is therefore clearly covered by the explanation and could safely be termed as a property dispute arising out of matrimonial relationship to the extent of Plaintiff's share in the property of her deceased husband and therefore she could be entitled to seek exemption from payment of Court fees.

17. However it is clarified that in the event if at the end of trial it is found that she is not the only beneficiary and there are other beneficiaries who may be her sons or otherwise, then in that case Court fees will be entitled to be paid by them in accordance with law.

18. Today, the only limited case before me is with respect to the suit for partition by the Petitioner – Plaintiff and therefore, I am of the opinion that it will not be appropriate to hold that Plaintiff is not entitled for exemption of Court fees to the extent of her share as a beneficiary.

19. It is clarified that this exemption will be restricted only to the Plaintiff in the estate and share of her deceased husband. In so far

as the four decisions of this Court having been considered by the learned Trial Court are seen, in all those four decisions, merits of the facts of those cases have not been discusses, save and except the interpretation of the twin notifications issued by the Government of Maharashtra are interpreted. I find that the decision in the case of **Ramila Rajnikant Kilachand V/s. Harsh Rajnikant Kilachand & Ors.** (*fifth supra*) not only discusses the interpretation of the aforesaid twin notifications in their entirety but also discusses the effect of expansion namely “property disputes to mean property disputes arising out of and concerning matrimonial matters” as stated in the said notifications and decides the case accordingly. The reasons and findings returned in paragraph No.20 are based upon the discussion in paragraph No.18 of the said decision in that case.

20. For convenience paragraph Nos.18 to 20 are reproduced below:-

“18. In my view, decisions of single Judges to which a continue reference the challenge has been made hereinabove, continue to hold the field. The observations of the Division Bench while dealing with the challenge to the explanation, does not alter the legal position. The expression property dispute is explained to mean disputes arising out of and concerning matrimonial matters. It is pertinent to note that expression matrimonial matters has not been defined. While, the main part of notification refers to case relating to maintenance, violence and divorce, the explanation only defines expression “property disputes”. Even while defining or explaining them the intent is not to restrict the disputes but clarify the concept. Said concept is clarified. The expression has been defined keeping in mind a relationship. Disputes arising out of and concerning matrimonial matters have to be given the meaning which the legislature / Government intended to give. In other words, whenever, terms

such as "arising out of" "concerning" are used, the idea is not to restrict the expression but to give a wider meaning to the same. The expression property disputes is defined to mean property disputes arising of and concerning matrimonial matters. The terms "arising out of" and "concerning" are wide enough but they have to be considered in the context of matrimonial matters. Although it is not necessary to go in details but whenever such expressions are used, then how the same has to be construed has been subject matter of decision in number of judgements rendered by the Supreme Court. In the case of Doypack Systems Pvt.Ltd. Vs. Union of India, reported in A.I.R. 1988 S.C. 782, the Supreme Court in paras 48 and 49 have held thus:-

“48. The words "arising out of" have been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking.

We are of the opinion that the words "pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate", see Corpus Juris Secundum, Volume 17 page 693".

49. The expression "in relation to" (so also pertaining to") is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see State Wakf Board Vs. Abdul Azeez AIR 1968 Mad. 79, 81 paragraphs 8 and 10, following and approving Nitai Charan Bagchi Vs. Suresh Chandra Paul (1962) 66 Cal WN 767, Shyam Lal Vs. M.Shayamlal AIR 1933 All 649 (FB) and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term 'relate' is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression and not of contraction.

It is not necessary for me to decide in this case as to what would be covered by the term "matrimonial matters." Mr. Patel has

invited my attention to the provisions of section 7 of Family Courts Act 1984, the same reads thus:-

- “7. (1) Subject to the other provisions of this Act, a family Court shall,*
- (a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and*
 - (b) be deemed, for the purpose of exercising such jurisdiction under such law to be a District court, or as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends;*

Explanation: - The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

- (a) A suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*
 - (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;*
 - (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*
 - (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;*
 - (e) a suit or proceeding for a declaration as to the legitimacy of any person;*
 - (f) a suit or proceeding for maintenance;*
 - (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor;*
- 2. Subject to the other provisions of this Act, a Family Court shall also have and exercise -*
- (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and*

- (b) *such other jurisdiction as may be conferred on it by any other enactment;*

19. *In the context of section 7 of the Family Courts Act, it is possible to hold that the term "matrimonial matters" would include within its import, cases not just of divorce, judicial separation, annulment of marriage, interim maintenance, alimony, custody of children, maintenance envisaged by marriage laws but matters concerning property rights which arise out of matrimonial relationship. The term has to be understood in the context of a relationship after marriage and qua a family. Ultimately, all family matters were intended to be adjudicated by a family court. While interpreting a provision, which is beneficial in nature law is intended to confer a right on a weaker section women, so as to remove an obstacle and give opportunity to seek redress. If two interpretations are reasonably possible, then one which will be in favour of women's right to seek remedy will have to be preferred; rather than denying her an opportunity at the threshold. However, the wider question need not be finally decided in this case.*

20. *Suffice for me to state that in the present case, the status of plaintiff is that of a wife/ widow. She is claiming a declaration of her share in the property of her deceased husband on the basis that she has a right therein upon his demise. She has averred that, that right is being denied to her not just by other members of her deceased husband's family but even her own son. She claims her individual right in the properties and prays for ascertainment of the share therein and upon such ascertainment to grant the same and for that purpose, even, partition the assets and properties, by metes and bounds. It is, therefore, a clear case where on account of matrimonial relationship, the plaintiff asserts her right in the properties of her deceased husband which devolves either in terms of intestate succession or by testamentary disposition being executrix and beneficiary of the estate. This is a case of a woman beneficiary coming as a litigant to the court seeking her share in the estate of her deceased husband, denied to her by the members of the husband's family. In my view, such matter is covered by the explanation and could safely be termed as a property dispute arising out of matrimonial relationship. To the extent of the plaintiff's share in the property of her deceased husband she is, therefore, entitled to seek exemption from payment of court fees. It is clarified that after adjudication, if ultimately, it is found that the plaintiff is not sole beneficiary but there are others then to the extent of her sons share, plaintiff or the sons will have to pay court fee. Suit for partition is not a suit where parties are not adversaries. It is a suit where all parties are plaintiffs and defendants. In such*

litigation it will not be proper to hold that the women litigant would be entitled for exemption in payment of court fees, not just qua her share as beneficiary but even that of her sons. As held by this Court (Patil, J), exemption will be restricted to the plaintiff and her share in the estate of deceased.”

21. As the reasons enumerated in paragraph Nos.18 and 19 clearly apply to the facts and circumstances of the present case, the present case is therefore clearly covered by the said decision. In view of the above observations and findings, the impugned order dated 13.12.2021 passed in application below Exhibit-38 deserves to be interfered with. The said order dated 13.12.2021 is quashed and set aside, resultantly directing that Plaintiff is exempted from payment of Court fee subject to directions contained in the present judgment and order.

22. In view of the fact that original Regular Civil Suit No.286 of 2019 was filed in the year 2018 and matter has remained pending from the year 2018 because of the aforesaid controversy, the learned Trial Court is directed to determine and decide Regular Civil Suit No.207 of 2021 as expeditiously as possible and in any event within a period of one year from today. Parties are directed not to take any unnecessary adjournments and co-operate with the learned Trial Court. Trial Court is directed to give adjournments only if they are utmost necessary and decide the Special Civil Suit No.207 of 2021 strictly in accordance with law. All contentions of the parties are

expressly kept open.

23. With the above direction, Writ Petition is allowed and is disposed of.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HANUMANT
SAWANT

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HARSHADA
HANUMANT
SAWANT
Date: 2024.04.15
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