



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

Writ Petition (WP) No. 4953 of 2023

Santosh Shalikrao Kadam

Versus

Alkatai Santosh Kadam

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.N.Patre, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 29th FEBRUARY, 2024.

Heard.

2. The Order Below Exhibit 22 dated 6th May, 2023 passed by the learned Joint Civil Judge, Senior Division, Pusad, Dist. Yavatmal in HMP No. 211 of 2021, granting interim maintenance to the tune of Rs.5,000/- to the respondent, is under challenge in this writ petition.

3. The learned counsel for the petitioner pointed out that the learned trial Court has considered the income of the petitioner from the agricultural field namely Survey No. 171, which according to the

petitioner is in possession of the respondent and she is taking income out of it.

4. Thereupon, the petitioner was asked to file affidavit to that effect and it is also directed to state in the affidavit the fact that, the respondent is in possession of the above referred land or he will not claim any income from the said land.

5. The petitioner has accordingly filed an affidavit dated 23rd January, 2024 stating as under:

1. Being aggrieved by the order dated 06.05.2023 passed by learned Joint Civil Judge, Senior Division, Pusad in HMP No. 211.2021 below Exh.22, I preferred the writ petition before this Hon'ble court. This Hon'ble court vide order Dtd. 08.08.2023 was pleased to issue the notice to the respondent. However, inspite of the due notice to the respondent, she did not appear in the present matter. The matter was listed before this Hon'ble court and this Hon'ble court asked the petitioner to file the affidavit / undertaking in respect of the income arising from the agricultural land bearing survey no. 171 admeasuring area 2 Acre 10 guntha. Hence the petitioner filed the present affidavit as under.

2. That, the aforesaid land is situated at mauza Vaypana, Tah. Hadgaon, Dist. Nanded which is the parental Village of the respondent. I submit that due to assault made by brother of the respondent on 20.03.2022 and to avoid the similar act I did not go to the village due to fear. The respondent already took the income arising from the said agricultural land. However even otherwise by the present affidavit the petitioner undertakes that, if the respondent receives the income from the said agricultural land, he has no any objection for the same.

3. The petitioner further state that he will not claim the income arising from the said agricultural land and the respondent will be entitled for the same. The petitioner has no any objection if the respondent receives the

income arising from the land. However, by the present affidavit petitioner state that he will remain to be the owner of the said land, however only the respondent is having right to receive the income/benefit arising from the said land every year.

5. In light of above referred facts and since nobody is representing on behalf of the respondent, though served, I am of the opinion that the matter needs to be remanded back to the learned trial Court to decide the application for maintenance afresh after taking into consideration the contents of the affidavit filed by the petitioner before this Court and after hearing the respondent. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The Order Below Exhibit 22 dated 6th May, 2023 passed by the learned Joint Civil Judge, Senior Division, Pusad, Dist. Yavatmal in HMP No. 211 of 2021, is hereby quashed and set aside.
- iii. The matter is remanded back to the learned Joint Civil Judge, Senior Division, Pusad, Dist. Yavatmal for deciding the same afresh after hearing both the parties by taking into consideration observations made in this order.

[ANIL S. KILOR, J.]