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941wp958.15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

941 WRIT PETITION NO. 958 OF 2015
AND
CIVIL APPLICATION NO. 1503 OF 2024
IN WP/958/2015

JANABAI HARSING SHINDE AND OTHERS
....Petitioners

VERSUS

NARSING HARSING SHINDE AND ANOTHER
.....Respondents

Mrs. A. S. Jadhav, Advocate h/f Mr. P. R. Katneshwarkar,
Advocate for the petitioners
Dr. R. J. Godbole, Advocate for the respondent Nos. 1 and 2
Mr. K. S. Patil, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 10th JANUARY, 2025

P. C.

1. Heard the parties. The matter is taken up for final hearing with the consent of the parties.

2. By way of impugned order the petitioners are directed to pay an amount of Rs. 1500/- per month to respondent No. 2 who has filed RCS NO. 114/2010 seeking

partition and separate possession of the joint family property. Suit is pending before the learned Joint Civil Judge Junior Division, Bhokardan.

3. It is the case of the respondent that as she is widow of deceased brother she has share in the family property of the petitioner. The decision in the suit may take some time and therefore she prayed for monthly maintenance from the petitioners as they are having the possession of the land and they are taking crops. Entire income is thus taken by the them.

4. It is the case of the petitioner who are defendants before the trial court that there are only two lands in which partition is sought. Land Gut No. 60 is self acquired property of the petitioner. The land Gut No. 65 was tenanted land and there cannot be partition. The learned trial judge for the reasons recorded in the order partly allowed the application and directed to pay an amount of Rs.1000/- towards maintenance till disposal of the suit.

5. The learned advocate for the petitioner vehemently argued that though the learned court has considered that prima facie property Gut No. 60 is self acquired and the property Gut No. 65 is received through grand father as a tenant, however, held that land Gut No. 65 can be partitioned. The learned court thus has committed error in allowing the application. She has further stated that the court has wrongly treated the application under Section 22 of the Hindu Adoption Maintenance Act, 1956 when in fact the proceeding is only of RCS and thus prays for allowing the writ petition.

6. The learned advocate Dr. Godbole vehemently opposes the petition. He submits that there is no dispute that the petitioner alone are in possession of the property. Nature of the property is not yet proved to be self acquired property. In fact the properties are joint family property. It is only a stand of the petitioners that the properties cannot be partitioned. Respondent No.2 is the old aged woman. She has no independent source of

income. The court has rightly considered the application. Eventhough provision is wrongly quoted, the court always has a power to grant such relief with the aid of section 151 of the CPC. Merely quoting of wrong section will not make the order legal. He prays for dismissal of the writ petition.

7. Having heard the parties this court finds that suit is of 2010 and it is still pending. When the suit is for partition the court has every authority to pass such orders looking to the nature of the dispute and to take interest of the parties by invoking the powers under Section 151 of the CPC. This court does not find any illegality with the impugned order. The writ petition is devoid of merits and same is dismissed as such.

8. The learned trial court is directed to make every endeavor to decide the suit as early as possible & in any case within one year from today.

9. The civil application, if any stand disposed off.

[KISHORE C. SANT, J.]