

Hakimuddin Vs. Zohrabai and ors.

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Court : Madhya Pradesh

Decided On : Aug-30-1988

Reported in : II(1990)DMC72

Judge : K.L. Shrivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 151

Appeal No. : C.R. No. 136 of 1988

Appellant : Hakimuddin

Respondent : Zohrabai and ors.

Advocate for Def. : M.G. Upadhyaya, Adv.

Advocate for Pet/Ap. : Fazal Hussain, Adv.

Disposition : Petition dismissed

Judgement :

K.L. Shrivastava, J.

1. This revision petition is directed against the order dated 6-5-1988 passed by the VIIIth Additional Judge to the District Judge, Indore in Civil Suit No. 14-A of 1988.

2. Circumstances giving rise to the petition are these. The non- applicant Zohrabai is the sister of the applicants Hakimuddin and Zakir Hussain. On the death of her father she instituted the aforesaid suit against the applicants for partition of the house in dispute.

3. During the pendency of the aforesaid suit, the non-applicant Zohrabai filed an application under Section 151 of the Civil Procedure Code for grant of interim maintenance alleging that by a written agreement her brothers had agreed to pay Rs. 500/- per month to her towards her maintenance.

4. After affording opportunity of hearing to the parties, the learned trial Judge relying on the decisions in Domaji v. Mst. Ubadrabai (1967 MPLJ SN 104) and Naval v. Banabai (1971 MPLJ SN 49) passed the impugned order directing the applicants 1 and 2 to pay Rs. 400/- per month to the non-applicant No. 1 towards interim maintenance out of the income of the house.

5. The contention of the petitioners' learned counsel in this Court is that the decisions relied on by the learned trial Judge relate to Hindus and are of no help to the non-applicant No. 1 and that the impugned order deserves to be set aside.

6. On a careful consideration of the facts and circumstances of the case I find that there is no merit in this revision petition.

7. In a suit for partition irrespective of the question of caste the order for interim maintenance can certainly be made against the party enjoying the property in dispute. In the decision in Naval's case (supra) it has been observed thus :

'In principle an order granting maintenance to a plaintiff in a partition suit can always be sustained on grounds of equity and convenience. The provisions of Section 151 of the Civil Procedure Code are wide enough to enable the court to make such orders, the maintenance allowance in figures being well within the approximate net income from the portion or share of the property that might fall to the share of the plaintiff. Even when there is uncertainty about the exact share that the plaintiff might get, the Court can still pass an order for maintenance if the figure awarded is well within the limit of the value of the minimum share in the net

income which the plaintiff would be getting in any view of the case. But where the plaintiff's entitlement to a share is itself questioned and the defendants are not prepared to accept that the plaintiff is entitled to any share whatsoever then no order under Section 151 Civil Procedure Code can be made granting the plaintiff maintenance. If the Court considers it a hard case it should at the first instance from a provisional decision whether the plaintiff would be entitled to any share at all and if on summary enquiry it comes to a finding in favour of the plaintiff, maintenance may still be ordered though the provisional finding will not in any manner control the final judgment.'

8. In the light of the agreement, an award of Rs. 400/- per month towards maintenance can by no means be characterised as unjust.

9. On a careful consideration I find that no case for interference in exercise of this Court's revisional jurisdiction under Section 115 C.P.C. has been made out. The revision petition is, therefore, dismissed with costs. Counsel's fee Rs. 50/-, if certified.