
(2006) 11 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 3133 of 2006

Prabhakar Dayaram Narkhede

APPELLANT

Vs

Vijaya alias Shakuntala Ghanshyam Chaudhari

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Citation : (2007) 3 BomCR 722

Hon'ble Judges : Kingaonkar V.R., J

Bench : Single Bench

Advocate : P.N. Kutti, for the Appellant; Swapnil S. Patil, for the Respondent

Final Decision : Allowed

Judgement

Kingaonkar V.R., J.—Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner challenges the order passed by learned Civil Judge, J.D., Jalgaon whereby application filed by the defendant/ petitioner in suit (RCS No. 217/2005) came to be rejected. The petitioner objected the suit on the ground that proper Court fees have not been paid. The suit was filed by the respondent for declaration and partition along with separate possession in respect of the ancestral property. She claimed her right as heir of her deceased father. She is real sister of the petitioner. The petitioner alleged that this kind of dispute is out side the realm of expression "matrimonial dispute" which is exempted for the purpose of Court fees under the Government Notification dated 23rd March, 2000. The trial Court over Ruled the objection.

3. Considering the legal position which emerges from various authorities including "Shri Bipin Dalpatbhai Shah v. Vasantben Rasilal Zaven" 2003 (Supp. 2) Bom.C.R. 786 : 2001 (4) M.R. 1, Smt. Ashabai Shiral and anothers Vs. The Executive Engineer, M.S.E.B. (O and M) Division, and "Smt. Ramila Rajnikant Kilachand v. Mr. Harsh Rajnikant Kilachand and Ors." 2004(6) Bom.C.R. 75 : 2004(4) All.M.R. 106 it is manifestly clear that the dispute which does not relate

to the matrimonial cause is outside the purview of the special notification which allows exemption from the Court fees to women litigants. It is expedient that the learned trial Court has committed the patent error while rejecting the objection of the petitioner. In fact, the respondent ought to have been directed to pay requisite Court fees. Consequently, the petition deserves to be allowed.

4. In the result, the petition is allowed and the impugned order is quashed. The objection raised by the petitioner is valid and being treated as allowed. The learned trial Court may grant sufficient time to the respondent to deposit the court fees having regard to the fact that she is a woman litigant and is old aged. Rule made absolute in the above terms. No order as to costs.