

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram,	Court's or Judge's orders.
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WRIT PETITION NO. 4252 OF 2014

SABERABEGUM HUSBAND MUSTAQUALI
VERSUS
DECEASED HABEEBUDDIN NIJAMMUDDIN PIRJADE THR
LRS. SALEHABEGUM WIDOW OF HABEEBUDDI

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Advocate for Petitioners : Mr. Dhorde Pramod P.
Advocate for Respondent Nos. 2 to 4, 6 & 7: Mr. Naseem R. Shaikh.
Advocate for Respondent Nos.30 to 32: Mr. M. N. Navandar.

CORAM: N. W. SAMBRE, J.
DATED: 20th APRIL, 2015.

PER COURT:

1. This petition is filed by the plaintiff in R.C.S. No.125 of 2012 which was preferred for partition, separate possession and injunction. In the said suit, applications Exhibit-253 and 255 came to be filed for bringing on record the legal heirs of defendant No.5 and defendant No.1 (2) which came to be rejected on 13th January,

2014.

2. The reason for rejection is, so far Respondent No.5 is concerned, there are no legal heirs of defendant No.1 (2) whose legal heirs died prior to his death. As such in my opinion no interference is called for.

3. So far as the next contention of learned counsel for the petitioner is concerned, he claims that the application under Order 6 Rule 17 Exhibit-229 came to be rejected. He would urge that the amendment that is sought in the plaint is based on the subsequent development upon transfer of the part of the suit property.

4. The learned trial Court while rejecting the said application has given reason that the claim of the petitioner plaintiff is to the extent of 1/7th share. Even if the said reason is accepted, the claim of the plaintiff cannot be restricted to the properties which are available on the date of filing of the suit or passing of the decree. All such property which is in common hotchpotch the

plaintiff, is equally entitled to claim partition of. In view thereof in my opinion the order dated 18th February, 2014 passed by 3rd Joint Civil Judge, Senior Division, is not maintainable in the eyes of law as such same is set aside.

5. The application Exhibit-229 stands granted. Petition stands partly allowed to the above extent.

6. In view of the consent given by the learned counsel for the parties, the amount of costs deposited be transferred to the High Court Bar Library.

[N. W. SAMBRE, J.]

Dt.20/04/2015
ans/4252