

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3492 OF 2016

Jijabai Pandit Badgujar

..PETITIONER

VERSUS

Ahmedali Niyajali and Others

..RESPONDENTS

....

Mr. S.P. Shah, Advocate for petitioner.

Mr. Mangesh Jadhav, Advocate h/f M.V. Bhamre, Advocate for
Respondent Nos. 1 to 17.

....

CORAM : T.V. NALAWADE, J.

DATED : 26th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Civil Judge, Junior Division, Shindkheda on Exhibits 69 and 70 in Regular Civil Suit No. 82 of 2012. By this order, learned Judge of the Trial Court has rejected the application which was filed for relief of setting aside the 'no cross' order. Both sides are heard.

2. The suit is filed for relief of partition and also for declaration and possession. In view of the nature of relief, this Court holds that opportunity needs to be given to Defendant No.8 to get decision on merits

and that may not become possible unless opportunity to fullest extent by cross examining witnesses is given. However, the other side is required to spend on present proceeding. Therefore following order:

Petition is allowed subject to payment of costs of Rs.10,000/- (Rupees Ten Thousands Only) by present petitioner to original plaintiff. The cost amount is to be deposited in the Trial Court before 16th November, 2016. In view of the submissions made, the cost is to be given to Plaintiff No.4. In case the amount is deposited, it is to be presumed that no cross order is set aside by this Court and the proceeding is to be conducted from that stage. If amount is not deposited, it is to be presumed that present proceeding is dismissed. Authenticate copy to both the parties.

(T.V. NALAWADE, J.)

SSD