

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

**WRIT PETITION NO. 6896 OF 2015
WITH
CIVIL APPLICATION NO. 1621 OF 2016**

Purushottam Shankar Ghodgaonkar ..PETITIONER/APPLICANT

VERSUS

Gajanan Shankar Ghodgaonkar
and Others ..RESPONDENTS

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Mr. R.R. Mantri, Advocate for petitioner/applicant.
Mr. S.D. Joshi, Advocate for Respondent No.1.

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**CORAM : T.V. NALAWADE, J.
DATED : 04th OCTOBER, 2016**

ORDER :

1. The petition is filed to challenge the order made on Exhibit 59 in Regular Civil Appeal No. 24 of 2013 filed by the present petitioner to challenge the judgment and decree made in Regular Civil Suit No. 167 of 2000 which was pending in the Court of Civil Court, Junior Division, Chopda. Heard both the sides.

2. The suit was filed by Respondent No.1 for relief of partition of ancestral and joint Hindu family property against the brother, present

petitioner and sisters of petitioner. It appears that initially ex-party order was made against the Defendant No.8 – Indira – sister of plaintiff and after that she died. The suit proceeded and in the judgment the Trial Court has given share to Indira also.

3. In the appeal filed by the present petitioner, legal heirs of Indira i.e. Arun filed application and he informed the Court that in addition to him, Indira has left three more legal heirs like her daughters Vasundhara, Vidya and Sahilaja (one deceased but leaving behind three issues). This application is allowed by the appellate Court. After that the petitioner filed application Exhibit 59 and requested the District Court to issue notices to all the legal heirs of Indira of the appeal.

4. Admittedly, Arun has filed appearance in the appeal. He will be representing the strip of Indira as parties are Hindus and that strip will get definite share if Indira succeeds and she gets particular share in the property. In view of this circumstance, it can be said that Arun will be representing that strip. Though it can be said that after addition of the parties, the notices in the appeal are also required to be sent, it can be said from the approach of the appellant that he wants to protract the things. It is not certain as to how much time will be required for service

of the notices on all the legal heirs of Indira and the petitioner/appellant wants exactly the same thing. In view of this circumstance, the appellate Court held that one legal heir – Arun is on the record and has filed application for all the legal heirs of Indira and thus there is no necessity to send notices to all the legal heirs. Now all the strips are represented in the appeal. In view of the above, this Court holds that it is not possible to interfere in the order made by the District Court.

5. In support of the contention that provisions of Order XXII Rule 4 Sub-Rule 4 of the Code of Civil Procedure are applicable in such case, the learned Counsel for respondent placed reliance on one case of Apex Court in *S.L.P. No. 21276 of 2006 (Mata Prasad Mathur (dead) by L.Rs. Vs. Jwala Prasad Mathur and Others)*. The petition stands dismissed. Civil application is hereby disposed of.

6. All points are kept open. It will be open to submit that due to the death of Indira and not bringing the legal heirs on record by the plaintiff, the matter itself was not tenable.

(T.V. NALAWADE, J.)

SSD