

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

952 WRIT PETITION NO. 7999 OF 2015

SHRIRAM SUDAMRAO DESHMUKH AND OTHERS
VERSUS
ANITA NIRANJAN @ VIJAY DESHMUKH AND OTHERS

...
Advocate for Petitioners : Gaikwad Anil M.
Advocate for Respondent 1 : K.D. Khade
...

CORAM : T.V. NALAWADE, J.
DATED : 20th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 47 by the learned Civil Judge, Junior Division, Hadgaon in R.C.S. No. 45/2012. Both the sides are heard.

2. In a suit filed by respondents for partition and separate possession against her in laws, application at Exh. 47 was filed. Present petitioners, defendants have contended that plaintiff No. 1 is Muslim lady, she was already married and so, the suit itself is not tenable for partition under Hindu Law. The Trial Court has observed that there are issues with regard to burden which needs to be discharged by plaintiff and if those issues are decided against plaintiffs, the plaintiffs may fail. The learned counsel for petitioners submitted that additional issue like tenability of the suit under Hindu Law for partition needs to

be framed in view of the defence taken by the defendants. There is some record like certificate in respect of marriage which was solemnized between plaintiff No. 1 and deceased Vijay showing the name of plaintiff No. 1 as Anisa Pathan. There is no specific pleading about the conversion. In view of these circumstances, it is desirable to have one issue about tenability of the suit in the present form. So, to some extent, the order can be interfered to direct the Trial Court to frame issue regarding tenability, though this issue needs to be decided on merits along with other issues. With these observations and by holding that application at Exh. 47 needs to be allowed, the petition is allowed in aforesaid terms and disposed of. The suit is to be decided within six months from the date of receipt of this order.

[T.V. NALAWADE, J.]

SSC/