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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6532 OF 2014

Arunabai Digambar Wadkar

PETITIONER

VERSUS

Kalyanrao Digambar Wadkar & others

RESPONDENTS

.....
Mr. R. S. Patil, Advocate for the petitioner
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 27th JULY, 2016

ORDER :

1. In spite of service of notice for final disposal, there is no appearance caused on behalf of the respondents.
2. Heard learned advocate for the petitioner.
3. Learned advocate for the petitioner contends that the petitioner, is defendant in regular civil suit No.8 of 2005 filed for partition and separate possession and that she is entitled for one fourth share in the suit properties. However, while an application to carry out execution in respect of suit properties according to the shares being claimed by her had been applied for, said request came to be rejected by the court. Learned advocate

states that the application ought to have been considered appropriately by the trial court while no precept as yet has been sent for execution of the decree. Learned advocate purports to rely on a decision in the case of “*Hanumantappa Dyamappa Jadar V/s Mallavva and Others*” reported in *AIR 1996 Karnataka 183* contending that the court has all the power to re-declare share of properties in a preliminary decree.

4. There appears no contest on said proposition. It may well have to be considered that the court may have to look into Order XVIII of the Civil Procedure Code. As such, the impugned order dated 10th April, 2014 on Exhibit-1 in Regular Civil Suit No. 8 of 2005 is set aside and the matter is restored for reconsideration by the trial court in accordance with the facts and law.

5. Writ petition as such, stands disposed of. It is expected that the matter would be proceeded with expeditiously.

[SUNIL P. DESHMUKH, J.]