

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

**CIVIL APPLICATION NO. 14795 OF 2016
IN
WRIT PETITION NO. 9104 OF 2015**

Mahadeo Sudam Koli
(Died) Through L.Rs.
Jayashri Mahadeo Koli/Kamble and Others ..APPLICANTS

VERSUS

Baban Krushna Koli and Others ..RESPONDENTS

**WITH
WRIT PETITION NO. 9104 OF 2015**

Baban Krushna Koli ..PETITIONER

VERSUS

Mahadeo Sudam Koli and Others ..RESPONDENTS

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Mr. D.D. Poharkar, Advocate for applicants.
Mr.M.A.Thorbole, Advocate for Respondents No.1 in CA and for petitioner.

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**CORAM : T.V. NALAWADE, J.
DATED : 01st DECEMBER, 2016**

ORDER :

1. Both sides are heard. Civil application is filed by the legal heirs of Respondent No.1 in petition for permission to come on record as Respondent No.1 is dead. As it was the duty of the petitioner to bring them on record but the application is made by the legal heirs of Respondent No.1 themselves, civil application is allowed and necessary corrections to be made in the petition.

2. Present petition is filed to challenge the order made on Exhibit 43 in Regular Civil Suit No. 72 of 2010 by Civil Judge Junior Division, Washi due to which suit is proceeded ex-parte against petitioner - Defendant No.2.

3. The petitioner - Defendant No.2 is working in military. It appears that as per the record, suit summons was served on him but he did not turn up and so the impugned order is made. Considering the difficulty faced by present petitioner, this Court holds that opportunity needs to be given to the petitioner to contest the suit by filing written statement. Suit is filed for declaration and injunction in respect of immovable property, so petition is allowed.

4. Order made by the Trial Court on Exhibit 43 is hereby set aside. Application stands rejected. Time of three months is given to petitioner – original Defendant No.2 to file written statement from today. Authenticated copy to both sides. This is the last chance to original Defendant No.2. The suit will be expeditiously disposed of within six month from filing of the written statement.

(T.V. NALAWADE, J.)

SSD