

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

919 WRIT PETITION NO. 9314 OF 2016
WITH WP/11912/2016

AMINABEE SHAIKH HAMID THROUGH HER SPECIAL POWER OF
ATTORNEY HOLDER IMRAN ABDUL AZ
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Jadhav Kiran D
AGP for Respondent : B.A. Shinde
Advocate for Respondents 3 & 12 : S.S. Kazi
Advocate for Respondents 4 to 11, 13 to 19 : N.K. Chaudhari
Advocate for Respondents 15 to 19 : S.D. Hiwrekar

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CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2016.

ORDER :

1. Both the sides are heard. The submissions made by both the sides show that to some extent the dispute can be resolved and the entire amount need not be detained.

2. The present petitioner has filed substantive suit for partition and possession of his share. Relationship is not disputed. It is further not disputed that the deceased was the owner of the property and he has left behind three sons and three daughters. Under Muslim Personal Law, a son gets double the share of daughter and so in all nine shares will be required to be prepared. As there are three daughters, each daughter will

get $1/9^{\text{th}}$ share and each son will get $2/9^{\text{th}}$ share.

3. A zerox copy of so called affidavit sworn in by present petitioner and her two sisters like Halima and Karmubi is taken on record. To protect the interest of the sisters, who may be similarly placed, this Court holds that Civil Court needs to be directed to ascertain as to whether the remaining two sisters have really given up their share and they have no objection to give amount which can be paid to them through the brothers. In ordinary course, Civil Court could have directed to deposit entire amount of compensation in Civil Court and after partition, the amount could have been disbursed. In view of the aforesaid circumstances and to see that the amount is not unnecessarily detained, this Court holds that some arrangement can be made which could have been made in view of the aforesaid circumstances.

4. So, the competent authority may disburse the amount like $2/9^{\text{th}}$ share to each brother of the present petitioner by name Abdul Kadar, legal heirs of Gafoor Patel and legal heirs of Bashir Patel, by confirming that they have no dispute inter-se and their identity is confirmed. The remaining amount, which will be $3/9^{\text{th}}$, is to be deposited in the Special Civil Suit No. 340/2014

which is pending in the Court of Civil Judge, Senior Division, Aurangabad. If the two sisters of petitioner have no objection to give their amount to their brothers, such order can be made and disbursement of that amount can be made. The remaining 1/9th amount can be kept in the Court as subject matter of the suit and it can be disbursed after the decision of the suit.

5. In view of the aforesaid order, the remaining part of the dispute can be decided by the Civil Court. That will be entitlement of the plaintiff to get her share, the share in the property left behind by her father and to that extent, the application, if any, filed for temporary injunction etc. can be decided. This order is made only because both the sides made submission to make the order of aforesaid nature. The suit also can be expedited and in any case, within three months from the date of this order. The aforesaid observations are for the purpose of present proceeding. Petition is disposed of in aforesaid terms.

6. Writ Petition No. 11912/2016 is also disposed of as the valuation needs to be done on the basis of land revenue when the property involved in partition suit is agricultural land.

[T.V. NALAWADE, J.]

ssc/