

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

919 WRIT PETITION NO. 9988 OF 2015
WITH CA/3564/2016 IN WP/9988/2015

SHOBHABAI KANTILAL PUROHIT AND OTHERS
VERSUS
SURAJKUNWAR BABULAL @ DHANRAJ PUROHIT AND OTHERS

...
Advocate for Petitioners : Patil Pradip R.
Advocate for Respondents 1 to 3 : S.B. Bhosale h/f. S.P. Brahme

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CORAM : T.V. NALAWADE, J.
DATED : 2nd September, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Chalisgaon in Regular Civil Suit No. 8/1999 on application filed at Exh. 148. Both the sides are heard.

2. The suit is filed by present respondent Babulal Purohit (presently dead and his legal heirs are on record) for relief of partition and separate possession. Present petitioners are defendants in the said suit and they are contesting the matter. Babulal was uncle of defendant No. 1. It is the case of plaintiffs that suit property is their ancestral and joint family property. On that basis, they are claiming share in the suit property.

3. In the written statement, various defences are taken

by the defendants including defence like the decision of previous partition suit in their favour and other defences. By filing application, the defendants wanted to add one circumstance in the pleading, in written statement that after the death of Shantabai Babulal, the widow of Babulal, who died on 8.9.2009, her legal heirs are not brought on the record in time and so, the suit itself has abated. This amendment is refused, though other two amendments are allowed by the Trial Court.

4. The submissions made and the reasoning show that in the past also, the present petitioners had made an attempt to bring other two persons on record as legal heirs of Shantabai Babulal. But, Appellate Court had rejected that application. In any case, in a suit for partition, the shares are given per strips and then per capita. The plaintiffs constitute one such strip and so, present plaintiffs are representing one strip and in view of this circumstance, it cannot be said that suit in entirety has abated. It is clear that defendants are interested in protracting the things and so, such applications are filed. There are no merits in the petition. In the result, the petition stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/