

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

Writ Petition No.12171 of 2015

* Jyoti w/o Ramesh Hiwarale,
Age 32 years,
Occupation: Household and
Agriculture,
R/o Prakash Nagar, Garampani,
Aurangabad,
Taluka & District Aurangabad. .. **Petitioner.**

Versus

- 1) Shakuntalabai w/o Murlidhar Bankar,
Age 57 years,
Occupation: Household,
R/o. Boudhanagar,
Near Airport Chikalthana,
Aurangabad.
- 2) Muktabai w/o Nana Nikalje,
Age 47 years,
Occupation: Household,
R/o Golatgaon,
Taluka & District Aurangabad.
- 3) Dadarao s/o Limbaji Jadhav,
Age 50 years,
Occupation: Agriculture,
R/o Kadegaon, Taluka Badnapur,
District Jalna.
- 4) Ashok s/o Limbaji Jadhav,
Died through legal
representative
Nandabai w/o Ashok Jadhav,
Age 44 years,
Occupation: Household,
R/o Near Civil Hospital, Jalna,
Taluka & District Jalna.

- 5) Sukhdeo s/o Baburao Jadhav,
Age 49 years,
Occupation: Household,
R/o Kadegaon, Taluka Badnapur,
District Jalna.

.. Respondents.

Shri. P.M. Gaikwad, Advocate, for petitioner.

Shri. P.V. Ambade, Advocate, for respondent Nos.1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 30 SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The present proceeding is filed to challenge the order made on Exhibit 36. This application was filed by defendant No.3 for setting aside the order of "No Cross" made against the defendants and giving permission to cross examine the plaintiffs and their witnesses. It appears that in the past many adjournments were sought by the defendants and those adjournments were allowed or rejected and cost was also imposed. It appears that the said amount is also not deposited. Due to this circumstance, the order was made on 15-7-2015 and the

Court has refused to set aside that order as the cost amount also was not paid.

3) The suit is filed for relief of partition against the purchaser, present petitioner, from Ashok Jadhav. In view of nature of the suit and as brothers of the plaintiffs have not contested the suit burden will be on the purchaser to prove legal necessity. The decision will revolve around the point of legal necessity and the entitlement of the brothers to sell the property when there are married sisters and they were living with their spouses and not with the brothers. In view of these circumstances, this Court holds that the purchaser needs to be allowed to take decision on merits.

4) It appears that this Court by order dated 2nd May 2016 had directed the petitioner to deposit amount of Rs.1000/-. This amount is deposited by the petitioner in the trial Court. This Court holds that the cost amount which is ordered by the trial Court also needs to be deposited by the petitioner. Subject to this condition this Court holds that the petition needs to be allowed.

5) In the result, the petition is allowed. The order made by the trial Court on Exhibit 36 is quashed and set aside and that application is allowed subject to deposit of the cost amount as ordered by the trial Court in the trial Court within four weeks from today. Accordingly, the defendant will be entitled to cross examine the plaintiffs and their witnesses. The defendant also will be entitled to lead evidence. The plaintiffs are allowed to withdraw the amount deposited in the Court. The trial Court is directed to expeditiously dispose of the suit and within six months from the date of receipt of this order. Rule is made absolute in the above terms.

Sd/-
(T.V. NALAWADE, J.)

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