

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12598 OF 2015

SMT. INDUBAI KISAN HIRGUDE
AND ORS

...Petitioners

Versus

SMT. HOUSABAI MAHADEV HIRGUDE
AND ORS

...Respondents

....
Mr. Vijay Patil i/b. Kuldeep U. Nikam, Advocate for Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 4th FEBRUARY, 2016

P.C.

1. Heard Mr. Vijay Patil, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the legal representatives of the original defendants have challenged the orders dated 16.7.2015 and 3.8.2015 passed by learned Civil Judge, Junior Division, Miraj in final Darkhast Proceedings No.10 of 2004. By order dated 16.7.2015, learned trial Judge accepted the Court Commissioner's report at Exhibit-145 and ordered that the same shall be treated as part of the final decree. As far as agricultural properties are concerned, learned trial Judge directed for sending the decree to

the Collector. By order dated 3.8.2015, learned trial Judge ordered issue of possession warrant as per order dated 16.7.2015.

3. Mr. Patil invited my attention to the Court Commissioner's report at Exhibit-145 dated 22.12.2011 as also the partition proposed by the Court Commissioner. He submitted that having regard to the nature of the property, it is not practicable to partition the suit property. The petitioners are ready and willing to purchase the share allotted to the purchaser.

4. It is not possible to accept this submission considering that the petitioners did not set up the plea of preemption. During the course of hearing, Mr. Patil fairly submitted that the Suit instituted on the basis of right of preemption by the petitioners is also dismissed.

5. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)