

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

WRIT PETITION NO.10512 OF 2015

1. Vasant s/o Nivarti Shinde,
Age 66 years, Occu. Agriculture

2. Anurath s/o Nivarti Shinde,
Age 63 years, Occu. Agriculture

Both R/o Takalgaon, Taluka and
District Latur.

... PETITIONERS

VERSUS

1. Trimbak s/o Nivarti Shinge,
Age 53 years, Occu. Agriculture
R/o Village Takalgaon, Taluka and
District Latur.

2. Sow. Suman w/o Sukhdeo Jadhav,
Age 46 years, Occu. Household,
R/o Village Musalewadi,
Tq. Renapur, District Latur.

3. Sow. Sojar w/o Vinayak Bodke
Age 53 years, Occu. Agriculture
R/o Village wasangaon,
Taluka and District Latur.

... RESPONDENTS

.....
Mrs. M.D. Thube Mhase, Advocate for petitioners
Shri S.S. Manale, Advocate for respondent Nos.1 to 3
.....

CORAM: S. B. SHUKRE, J.

DATED: 20th January, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard
finally by consent of learned counsel for the parties.

2. It is seen from the impugned order that the case of **Harminder Pal & anr. Vs. Pritam Dass & ors.** reported in **1990 (98) P.L.R. 603** as well as the case of **Sant Singh Vs. Mohan Singh** reported in **(1999) 123 P.L.R. 71**, have been distinguished by the learned Civil Judge on the ground that the present suit is filed for partition and that there are no contesting parties and, therefore, the question of deciding as to who would be required to discharge the burden of proof first, would not arise. The view taken by the learned Civil Judge is in consonance with the established principles of law.

3. In the case of **Mohammed Sultan Mohammed Yasin & ors. Vs. Mohammed Nurani Mohammed & ors.** reported in **2005(4) ALL MR 721**, learned Single Judge of this Court has held that, a conjoint reading of Rule 1 and 2 of Order 18 etc. shows that the plaintiff has right to begin and at the same time, right to begin is also conferred on the defendant if he admits the facts in his written statement as contemplated by Rule 1. The learned Single Judge has further observed that, this rule is based upon the principle as to on the shoulders of which party the burden of proof be placed first and, therefore, in a given case, the defendant also could be called upon to begin his case before the plaintiff is directed to do so. But, in a partition suit, the learned Single Judge has further observed that, the

litigation being not adversary in nature, there is no question of supporting plaintiff in part or whole and, therefore, every member of family would be entitled for proving his case that he is having a particular share in the property. Thus, the view so taken by the learned Single Judge only highlights the settled principles of law. Therefore, no illegality or perversity in the impugned order is seen. The Writ Petition is dismissed with costs. Rule is discharged.

(S. B. SHUKRE)
JUDGE

fmp/wp10512.15