

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8840 OF 2016
(Shakuntala Uddhav Kalaskar and others Vs.Uddhav Laxman
Kalaskar and others)

Ms.A.N.Ansari, learned counsel for the petitioners.
Mr.N.T.Tribhuwan, learned counsel for respondent Nos. 1 to 5.

(CORAM : M.S.Sanklecha, J.)

DATE : 13/04/2017

PER COURT :

1. This petition challenges the orders dated 29/07/2016 passed by the 2nd Jt.Civil Judge, J.D. and in appeal by the District Judge respectively. The impugned orders have held that the petitioners i.e. the wife and her 2 children born in wedlock with respondent No.1 are not entitled to a partition of the Joint Hindu Undivided Family Property and consequently the suit filed is not maintainable.

2. The impugned orders have been passed on the basis that the suit is filed by the wife of respondent No.1 i.e. petitioner no.1 Shakuntala, and being a wife is not entitled to claim a share and partition in the Joint HUF property. However, the impugned orders have ignored the fact that the proceedings were initiated not only by wife of respondent No.1 but by also his 2 daughters, who undisputedly are co-parceners, who are entitled not only to a share in the Joint HUF property but also

entitled to seek partition.

3. After the petition was heard for some time, Mr.Tribhuwan, learned counsel appearing for the respondents very fairly and after taking instructions from his clients, states that the interest/rights of 2 daughters, who are petitioner Nos. 2 and 3 before this Court, will be protected and the HUF property i.e. Gat No.63, 1 hectre and 25 R, situated at Chincholi, Tal.Paithan, Dist.Aurangabad, standing in the name of respondent No.3 will not in any manner be transferred nor any third party interest created in the aforesaid HUF property. Further he states that the interest of petitioner Nos. 2 and 3 in the pending suit would be secured till the result of the suit. Respondent No.1 and respondent No.3 have filed an undertaking in this court to the above effect. The petitioner is satisfied with the undertaking given by the respondent Nos. 1 and 3. The undertaking is taken on record and marked as Exhibit "X" for the purpose of identification,

4. In the above view, Mrs.Ansari does not press the petition. The petition is allowed to be withdrawn with the aforesaid directions. However, as the interest of 2 minor children are involved, the Trial Court is requested to dispose of RCS No.394/2014 as expeditiously as possible.

(M.S.Sanklecha, J.)