

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

WRIT PETITION NO. 215 OF 2016

Kausabai Digambar Ingole
and others

.. Petitioners

Versus

Masu Digambar Ingole and others

.. Respondents

Shri Yogesh K. Bobade, Advocate for Petitioners.
The Respondent Nos. 1 to 5 are served.

CORAM : S. V. GANGAPURWALA , J.

DATE : 21ST APRIL, 2017.

PER COURT :

. Though the respondent Nos. 1 to 5 are served, none appears for respondent Nos. 1 to 5.

2. The learned counsel for petitioners submits that, no evidence order was passed against the petitioners/defendant Nos. 2 to 4. The petitioners filed an application Exhibit 44 seeking permission to adduce evidence and for setting aside the said order. The said application is rejected. The learned counsel submits that, the defendant No. 2 was looking after the matter on behalf of defendant Nos. 3 and 4. The defendant Nos. 3 and 4 were residing at matrimonial houses. The defendant No. 2 because of ill-health could not instruct the advocate and adduce

the evidence. The learned counsel submits that, one opportunity be given to petitioners to adduce the evidence.

3. The plaintiff and other defendants though served have not appeared before this Court. The suit is pending as interim orders are passed by this Court staying the suit.

4. The suit is for partition and separate possession, wherein each and every party has status of plaintiff.

5. Considering the reasons given, I am inclined to grant one more opportunity to petitioners, however, the petitioners deserve to be mulct with cost.

6. In the light of the above, the impugned order is quashed and set aside. Application below Exhibit 44 is allowed and the petitioners are allowed to adduce their evidence, however, subject to payment of cost of Rs. 7,500/- (Rs. Seven thousands Five hundreds only) to the plaintiff within a period of four (04) weeks from today. The writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]