

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3201 OF 2017

ABDUL QADAR SHAIKH HAMID SK ALI AND ORS
VERSUS
AMINABEE SHAIKH HAMID ABDUL AZIZ PATEL AND ORS

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Advocate for Petitioners : Shri Shaikh Mobin H.
AGP for Respondents 5 & 7 : Shri Yadav S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 04, 2018

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PER COURT :-

1. None present for respondent No.1.
2. A small issue arises in this petition. The parties are litigating with regard to the partition deed in Special Civil Suit No.340 of 2014. Grievance of the petitioners, who are original defendants is to the extent of issue No.2, which has been recast by the order of the Court on 1.3.2017. Issue No.2, which has been cast reads thus:-

“ Whether the partition deed is legal and valid?”

3. It is beyond any debate that that one who alleges has to prove. In the case in hand, it is the plaintiffs who have alleged that the partition deed is false and bogus and is not a valid partition deed. Keeping in view the law of pleadings and onus and burden of proving an issue, this

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case is squarely covered by the principle of “*One who alleges, has to prove.*”

4. In view of the above, this petition is allowed. The second issue, which is a part of the issues recast on 1.3.2017 shall stand substituted by the following issue:-

“2. Whether the plaintiffs prove that the partition deed is false, bogus and illegal?”

(RAVINDRA V. GHUGE, J.)

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