

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 14619 OF 2017

HARI GANSRAM BHALERAO DIED TH HIS LRS DINKAR HARI
BHALERAO AND OTHERS

VERSUS

TARABAI GANSARAM BHALERAO DIED TH HER LRS B.
G.BHALERAO DIED TH HIS LRS SUPDU B. BHALERAO AND
OTHERS.

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Advocate for Petitioners : Mr. Balkhande Prakash V
AGP for Respondents-State: Mr. S. N. Morampalle

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CORAM : V. K. JADHAV, J.
DATED : 11th APRIL, 2018

PER COURT:-

1. I do not find any substance in this writ petition.
2. The respondents had instituted the suit for partition and separate possession bearing Regular Civil Suit no.163 of 1986 pertaining to the landed property against the father of the petitioners. The father of the petitioners had denied that the land in question is the ancestral joint Hindu family property. According to the petitioners, the respondents/original plaintiffs failed to prove and discharge the burden of proving that the said property is ancestral joint Hindu family property. They have not examined any independent witnesses. Even the trial court has

decided the suit almost ex parte. Respondents/plaintiffs and their witnesses were not subjected to cross-examination. By judgment and decree dated 24.04.1996, the trial Court has decreed the suit.

3. Learned counsel for the petitioners submits that, father of the petitioners has not preferred any appeal against the judgment and decree in RCS no.163 of 1986. Even the petitioners have also not challenged the said decree after the death of their father. The said decree has now attained the finality.

4. The writ petitioners by way of this writ petition praying to quash and set aside the notice dated 01.11.2017 issued by respondent no.8, Tahsildar at Raver, District : Jalgaon, in Regular Darkhast bearing no.6 of 1998 in RCS no.163 of 1986.

5. It appears that the decree is for partition and separate possession of undivided estate and in terms of the provisions of Section 54 Civil Procedure Code, the Executing court has send the percepts to the Collector for carrying out the partition as per

the decree which has now attained the finality. The Collector has power to make equitable partition in the suitable cases and the Civil Court after passing of an preliminary decree for partition declaring the rights of the parties became functus officio. Consequently the writ itself is not maintainable challenging the notice issued by the Tahsildar for carrying out the partition of the suit property in terms of the decree passed by the Civil Court. Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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vsm/