

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

WRIT PETITION NO.10178 OF 2019

KASHINATH EKNATH CHANDANSHIVE
VERSUS
MATHURABAI NIVRUTTI CHADANSHIVE (DIED) THROUGH HER LEGAL
HEIRS U P GADE AND ORS

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Advocate for the Petitioner : Shri Dhobale Satish P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st August, 2019

Per Court:

1 The petitioner has filed Day Petition No.3/2016 for seeking correction in the decree dated 09.01.1984 delivered by the Trial Court in RCS No.135/1982. By application exhibit 35 filed under Order 38 Rule 5 of the Code of Civil Procedure, the petitioner had prayed that the amounts to be disbursed towards the acquisition compensation, should be attached until the Day Petition is decided. By the impugned order dated 25.03.2019, exhibit 35 has been rejected on the ground that the Trial Court has limited jurisdiction in the Day Petition and the jurisdiction cannot be expanded so as to pass an order under Order 38 Rule 5.

2 The petitioner is about 48 years of age today. He was born approximately in 1970. He was 12 years old when the suit for partition

and separate possession filed by Mathurabai was registered. His mother (Gayabai), his four brothers Shivappa, Bhanudas, Babru and Kashinath were the defendants in the 1982 suit. The suit proceeded ex-parte against all defendants.

3 In the above circumstances and keeping in view that the petitioner has approached the Trial Court for the first time on 01.08.2016 by filing the day petition, I do not find that the Trial Court has committed any error in passing the impugned order. This Writ Petition being devoid of merit is, therefore, dismissed.

4 Since the Day Petition is pending for almost three years and a short issue is involved, I deem it appropriate to direct the Trial Court to decide Day Petition No.3/2016 expeditiously and preferably on or before 29.02.2020.