

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4149/2018

(ABHISHEK GOVINDLAL KOTHARI & ANOTHER **VERSUS** DURGADEVI SUNDERLAL KOTHARI & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Bhutada with Shri Y.J. Maheshwari, counsel for petitioners.

CORAM : A.S. CHANDURKAR, J.
DATE : AUGUST 13, 2019.

Notice for final disposal was issued on 16.07.2016. All parties have been duly served but there is no appearance on behalf of the respondents. Considering the short issue involved, the learned counsel for the petitioners has been heard by issuing **RULE** and making the same returnable forthwith.

An order passed below Exhibit 132 in Special Civil Suit No.38 of 2005 is under challenge principally on the ground that the petitioners were not heard when the said order came to be passed.

In the suit for partition and separate possession, the original plaintiffs filed an application below Exhibit 123 seeking permission to transpose the defendant no.4 as plaintiff no.4. Another application seeking to amend the plaint was filed below Exhibit 124. Yet another application below Exhibit 132 was filed for directing the plaintiffs to pay proper Court fees. The trial Court on 26.06.2018 allowed all the applications.

By referring to the averments at Ground D, it is submitted on behalf of the petitioners that before the order below Exhibit 132 was passed, the petitioners were not heard. It is stated that the applications at Exhibits 123, 124 and 132 were decided on

the same date. The petitioners do not object to the orders passed below Exhibits 123 and 124 as said applications were filed by the petitioners themselves. It is submitted that insofar as the application below Exhibit 132 is concerned, it has been incorrectly held that the current market value would have to be taken into consideration to determine the Court fees. Moreover, it is only the plaintiff nos.3 and 4 who have been directed to deposit the Court fees.

Accepting the statement made on oath that the order dated 26.06.2018 passed below Exhibit 132 was without hearing the petitioners and in the light of the fact that there is no proper consideration of the prayer made in that application, fresh consideration of the application below Exhibit 132 is found necessary.

In that view of the matter, the order passed below Exhibit 132 is set aside on the ground that the petitioners were not heard when that application was decided. The trial Court shall decide that application afresh after giving an opportunity to all the parties. The petitioners are at liberty to file additional reply to the application below Exhibit 132.

The Writ Petition is allowed. Rule is made absolute in aforesaid terms. No costs.

JUDGE

APTE