

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7362 OF 2017

(BAKARAM RAMA WALTHARE & OTH..VS.. MRS. TANABAI TIMA SHENDE & ANR.)

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

Court's or Judge's orders

Shri Shashikant Borkar, Advocate for Petitioners.

CORAM : Z.A.HAQ, J.

DATED : JULY 03, 2019.

Respondent No.2 is reported to be dead. Earlier, Civil Application No. 2831 of 2018 was filed by the petitioners seeking permission to bring on record legal representatives of the respondent No.2. Necessary details were not given in the civil application and therefore it was dismissed by order dated 1st March 2019. In the order dated 1st March 2019 it is recorded that no-one appeared for the petitioners on 15th February 2019 and also on 1st March 2019.

The learned Advocate appearing for the petitioners today states that the petitioners are not responding for preparation and filing of the civil application.

It appears that the petitioners are not interested in prosecuting the petition. The writ petition has abated against the respondent No.2. The respondent Nos.1 and 2 are original defendants. The petition arises out of the order passed by the trial Court dismissing the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure praying that the exparte judgment and decree passed against her be set aside. The decree is for partition

and separate possession. The decree passed against the respondent No.2 and her legal representatives, if any, has attained finality as the petition is dismissed as abated against her. As the decree against respondent No. 2 and her legal representatives, if any, cannot be set aside or modified, the relief sought by the petitioners in this petition cannot be granted.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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