

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

971 MISC.CIVIL APPLICATION NO.71 OF 2020

1) POOJA W/O MAYUR BORSE AND ANOTHER
VERSUS

1) SUNANDA W/O ASHOK PATIL AND ORS

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Advocate for Applicants : Mr. Gandhi Amol S.
Advocate for Respondents No. 1 : Mr. Ruchir S. Wani

CORAM : MANGESH S. PATIL, J.
DATE : 12.07.2022.

PER COURT :

Heard both the sides.

2. The applicant No. 1 happens to be the daughter in law of the respondent No. 1 whose son Mayur was in Air Force and died unfortunately. After his demise the parties have involved in a suit for partition and separate possession filed by the respondent No. 1 and pending in the Court at Nandurbar, which the applicants, the widow and the son are seeking to be transferred to the court at Nashik.

3. The suit is for partition. The respondent No. 1 has merely claimed her 1/3rd share in the money received by the applicant No. 1 after demise of her husband on three counts, gratuity, provident fund and insurance which in aggregate is more than Rs. 72,00,000/-. Going by the nature of the proceeding, personal presence of a party is not required on every date. It is only at the time of recording of the testimonies that the parties may have to remain personally present.

4. The applicants are averring that the respondent No. 1 has been staying in Nashik and have produced a copy of the sale-deed under which the deceased along with his father jointly purchased a row house

at Nashik. However, the respondent No. 1 has been served with a notice on her address at Navapur District Nandurbar. Except the sale-deed there is nothing to demonstrate that she has been actually residing at Nashik.

5. Apart from the above state of affairs, it has been specifically mentioned in the affidavit in reply that the applicant No. 1 has already married second time. Name of her husband has also been mentioned. It has also been mentioned that she has been cohabiting with him at Gwalior. The fact has not been traversed by the applicant No. 1 by filing any rejoinder.

6. The fact that the applicant No. 1 being a nominee has received more than Rs. 72,00,000/- and has been earning a pension of Rs. 30,000/- per month, has also not been disputed by filing any rejoinder.

7. The respondent No. 1 is also around 55 years of age and being a woman even she would face a hardship if the matter is transferred to Nashik. As it is, the distance between Navapur and Nandurbar is also around 60 k.m.

8. In view of such peculiar state of affairs, I find no sufficient and cogent reason to transfer the matter.

9. The Application is rejected.

(MANGESH S. PATIL, J.)

mkd/-