



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

WRIT PETITION NO. 4821 OF 2022

(MAROTI KISAN GIRI (DEAD) THR. LRS SMT. INDIRABAI MAROTI GIRI & OTH. ..VS.. SMT.
KANTABAI HARI GIRI & OTH.)

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

Court's or Judge's orders

Shri A.A.Dhawas, Advocate for Petitioners.
Shri O.R.Deshpande, Advocate for Respondent Nos.1 & 2.
Shri Shyam Bissa, A.G.P. for Respondent No.4.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 02, 2023.

1. Heard.
2. The application for amendment in preliminary decree preferred by the respondent No.1 came to be allowed vide judgment and order dated 21/02/2022 passed by the Civil Judge Senior Division, Maregaon in Civil M.A. No. 4 of 2018, the said judgment and order is under challenge in this writ petition.
3. From the record, it is evident that the preliminary decree dated 24/01/2006 was modified in light of the subsequent judgment in the case of *Vineeta Sharma..vs..Rakesh Sharma*, reported in **2020 SCC ON-LINE SC 641**.
4. The impugned judgment and order is challenged on the ground that this Court in Second Appeal No. 476 of 2016 passed the decree and thereby held that the plaintiff and the defendant No.3 are entitled to 1/6th share each and legal heirs of the defendant No.1

are entitled to 4/6th share in the suit property. It is, therefore, submitted that the modification can only be made by this Court.

5. This submission cannot be accepted for the reasons that it was a preliminary decree and in view of the judgment in the case of *Vineeta Sharma* (supra) the Hon'ble Supreme Court of India declared that the provision contained in substituted Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liability. It is further held that the rights can be claimed by the daughter born earlier with effect from 09/09/2005 with saving as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December 2004.

6. In the above referred backdrop, as the partition is not yet taken place and as the respondent No.1 is having share with her brothers and daughter of her sister, accordingly the preliminary decree was modified.

7. In the circumstances, I do not find any merit in the present writ petition.

Accordingly, the Writ Petition is **dismissed**. No order as to costs.

JUDGE