

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12394 OF 2024

Narasinharao Ramchandra Shinde
(since deceased) through legal heirs
Deepak Narasinh Shinde & Anr.

.. Petitioners

Versus

Ratnamala Bapurao Kadam & Ors.

.. Respondents

.....

- Mr. Nachiket Vilol Khaladkar for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 10, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 06.09.2024.
3. Heard Mr. Khaladkar, learned Advocate for Petitioners.
4. By impugned order dated 08.08.2024 passed below Exh. 1124 filed by Defendant Nos. 3(a) and 3(b) (Petitioners herein) learned Trial Court has rejected the Application seeking issuance of witness summons to Defendant No. 6.
5. It needs to be understood that this is a partition Suit where even if the parties are nomenclatured as Plaintiffs and Defendants, all parties are in the shoes of the Plaintiffs. The reason which is given by the Trial Court in the impugned order is *prima facie* inadequate. Mr. Khadalkar has drawn my attention to the impugned order and more specifically paragraph No. 9 thereof.

6. An arguable case is made out by Mr. Khadalkar for issuance of notice and calling for reply from Respondents. Hence, issue notice to the Respondents made returnable on 23.09.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners.
7. Respondent is directed to remain present either by themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.
8. In the meanwhile, learned Trial Court is directed not to proceed with SCS No. 488 of 1997 until determination of the present Writ Petition.
9. Stand over to **23rd September, 2024.**

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.09.10
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