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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1352 OF 2020**

Shri Vasudev Govind Apte and Anr ... Petitioners

vs.

Shri Shankar Shashikant @ Govind Apte and ... Respondents
Ors

Mr. Manoj A. Patil a/w. Mr. Shubham Dhenge a/w. Mr. Akash M.
Murudkar for Petitioners.

Mr. Prashant Jadhav, for Respondent.

CORAM : GAURI GODSE, J.

DATED : 29th JULY 2025

ORDER:

1. This petition is filed by the heirs and legal representatives of deceased defendant no. 22 to challenge the order permitting to bring on record the heirs and legal representatives of deceased respondent no.22 and deceased respondent no.7 on record of the execution application. The execution application is filed for executing the partition decree dated 30th September 1987 in Special Civil Suit No. 172 of 1977.

2. Learned counsel for the petitioners submits that by the impugned order the application at Exhibit-40 filed by respondent

no.1 is allowed without issuing any notice to the parties. He submits that according to the petitioners, only they are the heirs and legal representatives of deceased defendant no. 22. The petitioners are objecting for bringing on record the name of respondent no.1 as heirs of deceased defendant no.22. Learned counsel for the petitioners points out the impugned order as recorded on application at Exhibit-40. He submits that the application is allowed only by saying 'the application is allowed'. He submits that the impugned order being an unreasonable order and passed without issuing notice is not sustainable. He submits that the petitioners are entitled to be heard before passing any order on Exhibit-40.

3. Learned counsel for respondent no.1 who had filed application at Exhibit-40 does not dispute that the application was allowed without issuing notice. He therefore submits that respondent no.1 would have no objection if the application at Exhibit-40 is directed to be heard afresh after giving opportunity to the parties to respond to the prayers.

4. The impugned order is passed on the application filed by respondent no.1. Hence, it would not be necessary to serve notice of this petition on the remaining respondents. No prejudice would be caused to the parties, in view of the following order.

5. Hence, the petition is partly allowed by passing the following order:

I) The order passed on the application at Exhibit-40 is quashed and set aside. The application at Exhibit-40 is restored to the file of the concerned executing court at Gadhinglaj.

II) The executing court shall issue notice to all the parties and decide the application at Exhibit-40 in accordance with law, after giving an opportunity of hearing to all the parties to the execution application.

III) The rival contentions of the parties on merits are kept open.

6. The petition is disposed of in the aforesaid terms.

(GAURI GODSE, J.)