

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

SECOND APPEAL NO.122 OF 2013

Sopan s/o Devba Wagh
Age 49 years, Occu.Agril.,
R/o Hiradgaon, Taluka Basmath-
Nagar, District Hingoli

..Appellant

Versus

Gayabai w/o Gangadhar Chaure,
Age 53 years, Occu.Household
R/o Pimpla Choure, Taluka Basmath
District Hingoli

..Respondent

Mr S.K.Adikine, Advocate for appellant

CORAM : N.W. SAMBRE, J.

DATE : 30th January 2015

PER COURT

1. This second appeal is by original defendant. The defendant suffered a decree for partition and separate possession in a Regular Civil Suit No.64 of 2007 by the judgment dated 21st July 2009 delivered by learned Civil Judge, Sr.Division, Basmathnagar. The learned trial Court ordered that the plaintiff is entitled to half share in the property Gut No.12 area 3 hectare, 77 R situated at Hiradgaon, Taluka Basmathnagar and shall be entitled for possession of the same.

2. An appeal being Regular Civil Appeal No.45/2009 preferred by the present appellant suffered same fate, as the District Judge-1, Basmathnagar confirmed the said finding by his order dated 20th October 2012, as such the present second appeal.

3. The learned Counsel for the appellant Mr Adkine strenuously urged that the judgments delivered by both the Courts below are not sustainable as the other ancestral property was not included in common hotch-potch and was not made subject matter of the suit. According to him, the objection was raised by the appellant, but the Courts below have not considered the same.

4. So far as the above referred contention is concerned, the learned trial Court has dealt with the same in paragraph 17 of the judgment. The trial Court, while considering the said contention made by the present appellant - defendant, has observed that the partial partition can be asked for in the property. Rather, the said issue goes to the benefit of the present appellant.

5. The learned Counsel in addition to above contention, submits that the mother who was entitled for the share in the property, however, the trial Court has dealt with the said issue as the plaintiff brought before the Court that after the divorce of the mother, she had entered into another wedlock.

5. Having considered the judgments delivered by both the Courts below, it is noticed that there is no illegality or perversity. No question of law is involved in the present second appeal. As such, the second appeal which is devoid of merit, stands rejected.

(N.W. SAMBRE, J.)