

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CIVIL APPLICATION NO. 7216 OF 2004
IN SA/724/2006 WITH CA/9174/2009 IN SA/724/2006

SUDAM VITHOBA SHINDE
VERSUS
DAGADU RAMBHAU TANAPURE AND OTHERS

Advocate for Applicant : Mr. Mukul Kulkarni, Advocate h/f
Mr. M Y Deshmukh and Mr. P S Pandit
Advocate for Respondent No.1: Mr. V.P.Latange.
Advocate for Respondent Nos.3 and 4: Mr. K. S. Bhore.

CORAM: T. V. NALAWADE, J.
DATED: 31st August, 2015.

PER COURT:

1. Heard both the sides. Seen the order made by this Court on 12th October, 2009.
2. It appears that defendant Nos.2 and 3, sons of defendant No.1, have sold entire area of Gat No.36 to defendant No.4 prior to the date of suit. The decree of partition is given in respect of Gat No.36 also by the trial Court.
3. The suit properties included following properties:

- (i) 3 houses.
- (ii) Gat No.37, admeasuring around 22 Hectares 2 Ares.
- (iii) Gat No.36 admeasuring 5 Acres.
- (iv) Gat No.137, admeasuring 11 Hectares 11 Ares.
- (v) Gat No.47 admeasuring 3 Ares.
- (vi) Gat No.49 admeasuring 2 Ares.

4. Only the purchaser has filed appeal and so if at all the equity is to be considered it can be considered as against the vendor defendant Nos.2 and 3. In view of these circumstances and probability that Gat No.37 is situated adjacent to Gat No.36 this Court holds that the partition in respect of other properties can be effected as that is not under challenge. Both the learned counsel for the plaintiff and defendant Nos.2 and 3 submit that such thing is permissible. Learned counsel for appellant, purchaser has surprisingly objection for doing such a thing. The purchaser cannot ask for equity as against the plaintiff as sufferer is the plaintiff. The land Gat No.36 only was sold and in view of these circumstances at the instance of purchaser the partition cannot be stalled which has become final in respect of other

properties. So, the order of interim relief is modified in following terms:

5. The partition can go on in respect of 3 house properties and the land Gat Nos. 137, 47 and 49.
6. Civil application is allowed and disposed of accordingly.
7. Hamdast permitted.

[T. V. NALAWADE, J.]

Dt.31/08/2015
ans/7216