

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 orders or Registrar's	Court's or Judge's orders.
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SECOND APPEAL NO. 644 OF 2012
WITH CA/10944/2012 IN SA/644/2012

GANGUBAI LAXMAN SAVANT
VERSUS
SAUMITRABAI BANSHI SAVANT

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Advocate for Appellant : Mr. Salunke V. D.

Advocate for Respondent No.1 Caveator: Mr. B. S. Kudale.

CORAM: T. V. NALAWADE, J.
DATED: 28th SEPTEMBER, 2015.

PER COURT:

1. The Appeal is filed against judgment and decree of Regular Civil Suit No.337 of 2002 which was pending in the Court of Civil Judge, Junior Division, Majalgaon, District Beed and also against judgment and order of Regular Civil Appeal No.31 of 2005 which was pending in

the Court of District Judge-2, Majalgaon, District Beed. Heard both the sides.

2. The suit was filed by present Respondent Saumitrabai for relief of partition and separate possession of her share in the suit property. The suit property is agricultural land bearing Gat No.159 to the extent of 2 Hectare portion and it is situated at Upali, Tahsil Wadwani, District Beed. Partition in respect of house property situated at Upali was also claimed and description of this house is given in the plaint.

3. One Laxman was the son of plaintiff and defendant is the widow of Laxman. It is the case of plaintiff that there was some dispute between Laxman and her husband Bansi and due to that Bansi had effected partition of the joint family property about 15 years prior to the date of suit and the suit properties were given to Laxman in the partition. It is contended that the suit properties were ancestral properties of Bansi. It is contended that after partition, the mutation was effected in the revenue record on the basis of intimation of partition given by Bansi to the revenue authorities and

till death of Laxman, his name was there in the revenue record as the owner of the suit property.

4. It is the case of plaintiff that about 12 years prior to the date of suit, Laxman died. It is her case that she being heir of Laxman she is entitled to equal share along with defendant. Laxman has not left behind any other heir, like issue. It is her case that, behind her back, the defendant got entered her name in the revenue record after the death of Laxman. It is her case that a false notice was also sent by defendant to plaintiff through an Advocate when the dispute started. It is contended that as the defendant is not giving her share, the suit was required to be filed. The portion which was allotted to that share of Laxman, from the Gat number, is shown in hand sketch map.

5. Defendant filed written statement and she denied that partition had taken place amongst Bansi, Laxman and the suit property was given to the share of Laxman about 15 years prior to the date of suit. She, however, admits that the name of Laxman was entered in the revenue record. It is her case that, after the death of

Laxman, the partition took place amongst Bansi, Plaintiff and the defendant.

6. It is the case of defendant that in the year 1988 Laxman wanted to take loan for agriculture purpose and for that land admeasuring 2 Hectare was shown to be given to Laxman and his name was entered in the revenue record. It is contended that though the said entry was made in the revenue record, Laxman continued to live in joint family with plaintiff and Bansi. It is her case that Laxman died as a member of Joint Hindu Family. It is her case that after the death of Laxman the dispute started and so partition took place and 2 Hectare portion was given to defendant in partition. It is her case that she got the possession as heir of Laxman in the partition. It is her case that it was represented to her that the land which was shown to be given to Laxman in the past was given to defendant in the partition. It is her case that due to such partition, her name came to be entered in the revenue record.

7. It is the case of defendant that Bansi has sold some portion which had come to his share and so there is no

possibility of partition of any property between Plaintiff and defendant.

8. Issues were framed by the trial Court and both the sides gave evidence. Both the Courts below have held that partition had taken place during the life time of Laxman and the suit property was given to the share of Laxman by Bansi who was also Karta of Joint Hindu Family. The mutation, which was sanctioned on 7th July, 1989, on the basis of report given by Bansi on 18th December, 1988, is considered by the Courts below. Defendant has also not disputed that such mutation was made though she has given different reason. On the other hand, the mutation which was made in favour of defendant dated 31st December, 1991 shows that she had applied to revenue authority to enter her name as the widow of Laxman and this mutation was not made on the basis of any intimation of partition. There are more circumstances like a notice given by defendant to plaintiff through Advocate. In the notice dated 5th December, 2002 she had contended that partition had not taken place of joint Hindu Family property. This

notice is duly proved and is not consistent with the aforesaid case of the defendant. There is one more notice dated 13th November, 2002 in which it was informed to Bansi by present defendant that 5 Acres land was given to the share of Laxman and the land which had come to the share of Bansi was sold by Bansi. In this notice, it was informed to Bansi by defendant that the defendant had taken steps to enter her name in the revenue record in place of Laxman as she was the legal heir of Laxman. This record is considered by the Courts below.

9. The learned counsel for the Appellant, original defendant argued much on the basis of one so called stray admission given by plaintiff in her cross examination. It appears that a suggestion was given to plaintiff that in the year 1991 partition had taken place amongst plaintiff, her husband and defendant. It was a composite question and in view of the aforesaid circumstances, not much weight can be given to this stray admission appearing on record in the cross examination of plaintiff.

10. Plaintiff is Class-1 heir of Laxman and so she is entitled to 1/2 share in the property left behind by Laxman. The property was standing in the name of Laxman and even the defendant was claiming that it was the absolute property of Laxman. Thus, in any case, plaintiff is entitled to have 1/2 share in the property. The Courts below have not committed any error. The points decided involves questions of facts and there is concurrent finding of both the Courts below. This Court holds that it is not possible to formulate substantial question of law to admit the appeal.

11. In the result, appeal stands dismissed.

12. In view of final disposal of the second appeal itself nothing further survives in the civil application for stay and the same stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.28/09/2015
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