

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

**SECOND APPEAL NO. 27 OF 2015
WITH
CIVIL APPLICATION NO. 1044 OF 2015**

Ganikhan s/o Nanhekhan,
Age: 66 years, Occu: Agri.,
R/o: Dhakalgaon, Tq. Ambad,
District Jalna.

...Appellant

versus

1) Gautam s/o Bhanudas Dehede,
Age: 46 years, Occ: Agri.,
R/o : Dhakalgaon, Tq. Ambad,
District Jalna.

2) Ramesh s/o Bhanudas Dehede,
Age: 43 years, Occ: Agri.,
R/o : Dhakalgaon, Tq. Ambad,
District Jalna.

3) Annapurnabai w/o Bhanudas Dehede,
Age: 64 years, Occ: Agri.,
R/o : Dhakalgaon, Tq. Ambad,
District Jalna.

...Respondents

.....
Mr. Milind M. Patil(Beedkar), Advocate for appellants.
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CORAM : N.W. SAMBRE, J.

DATED : 28TH JANUARY, 2015

PER COURT :

. Mr. Patil, learned Counsel for the appellant while entertaining validity and legality of the order passed by the District Judge-1, Jalna in Regular Civil Appeal No. 97 of 2013 and order passed below Exhibit-66 in Regular Darkhast No. 34 of 1992, has

sought to urge that the moment decree in execution is executed, the respondents might create third party interest or destroy the property. According to him, once it is held that he is entitled to 1/4th share in the suit property, he should have been permitted the actual partition and shall be bound by the decree passed by the Court for partition and separate possession, the moment partition in its letter and spirit is executed.

2. The said issue cannot be gone into at this stage in the present proceedings, particularly having regard to the fact that present proceedings are required to be restricted to the extent of scope of Section 47 of Code of Civil Procedure. Learned trial Court and lower appellate Court have rightly appreciated the said issue.

3. In the partition proceedings, Section 54 of Code of Civil Procedure takes care of the interest of the appellant and it is open for present appellant to agitate his grievance in the said proceedings. No substantial question of law is involved in present second appeal. Present second appeal fails, same stands rejected.

4. In view of rejection of second appeal, civil application does not survive, hence stands disposed of.

[N.W. SAMBRE, J.]