

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

39. SA/554/2015 With CA/13124/2014 In SA/554/2015 With
CA/13125/2014 In SA/554/2015

JAMILKHAN DAULATKHAN PATHAN
V/S
MANNABI ALIMODDIN AND OTHERS

Mr. Pathan Zareef Khan, Advocate for appellant.

Mr. S.K. Chavan, Advocate for respondent Nos. 1, 3 and 4.

CORAM : T.V. NALAWADE, J.
DATED : 12th October, 2015.

ORDER :

1. Civil Application No. 13124/2014 is filed for condonation of delay of 14 days. Heard both the sides. In view of the contents of the application and the submissions made, the application is allowed. Delay is condoned. Application is disposed of.

2. Heard the learned counsel for appellant. Seen the judgments delivered by the two Courts below.

3. The suit filed by the sisters is decreed in their favour and each sister of defendant No. 1 is given 1/6th share in the suit property. However, the first appellate Court has protected the sale deeds made in favour of some purchasers and the sale of this portion was done prior to the date of suit. The area of the

property which was already sold by Daulatkhan was around 1 H. 20 R. Both the Courts below held that the area of 7 Hectar 92 R. is available for partition. However, the first appellate Court has further held that sale deed, if any, made by defendant No. 1 prior to the date of suit is not binding on plaintiffs. In that case, there is possibility created that the decree holder may proceed against the purchasers, who were not party to the suit and that is apparently not permissible.

4. In view of the submissions made and the aforesaid circumstances, the appeal is **admitted** on following substantial question of law.

(i) Whether the original plaintiffs can be allowed to proceed against the purchasers, who had purchased some portion from defendant No. 1 under registered sale deed prior to the date of suit when they were not parties to the suit ?

5. Though the aforesaid substantial question of law can be considered in appeal, the area of around 28 R. remains there and for that in view of the peculiar facts and circumstances, the execution in respect of decree for 28 R. portion, remaining after protecting the sale deeds made in favour of purchasers cannot

stopped. To that extent the decree holder can go on and get the satisfaction of the decree. So the civil application for stay to that extent is dismissed.

6. Notice after admission is waived by Shri. S.K.Chavan learned counsel for original plaintiffs. Call record and proceedings from the trial Court and first appellate Court.

[T.V. NALAWADE, J.]

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