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

SECOND APPEAL NO.129 OF 2014

1. Vitthal s/o Ganpati Nanware
(Sutar), Age 63 years,
Occupation Agriculture,
R/o village Tambva, Taluka Kaij,
District Beed

2. Rukminbai w/o Vitthal Nanware
(Sutar), Age 58 years,
Occupation Household,
R/o As above

3. Prabhakar s/o Vitthal Nanware,
Age 30 years, Occu.Agriculture,
R/o as above

4. Ashok s/o Vitthal Nanware
Age 28 years, Occu.Agril.,
R/o as above .. Appellants
(Orig.Defendants)

Versus

1. Pallavi w/o Vilas Nanware,
Age 26 years, Occu.Household,
R/o Village Tambwa, Taluka Kaij,
District Beed

2. Amrata d/o Vilas Nanware,
Age 7 years (Minor), Occu.Education,
under guardianship of her natural
mother i.e. respondent no.1
Pallavi w/o Vilas Nanware,
R/o as above ..Respondents
(Orig.Plaintiffs)

Mr R.S.Deshmukh, Advocate for appellants

CORAM : N.W. SAMBRE, J.

DATE : 21st January 2015

PER COURT

1. In the present second appeal, this Court is required to deal with a very unhappy situation wherein after the death of the son of the

present appellant no.1, his wife and daughter were required to file suit for partition.

2. In a suit for partition filed by the present respondents, the appellants have given admission about the claim of the respondents-plaintiffs in the property, which resulted into the trial Court passing the decree in favour of present respondents under Order XII, Rule 6 of the Code of Civil Procedure. In Regular Civil Suit No.108 of 2005, the trial Court has passed the following order :

> "1. The suit is hereby decreed with costs.
>
> 2. Plaintiffs are entitled to 1/15th share each in the suit lands, so also defendant nos.1, 3 and 4 to the extent of 3/15th each and defendant no.2 to the extent of 4/15th each
>
> 3. Precept be sent U/s 54 of C.P.C. For effecting partition as per law to the Collector, Beed.
>
> 4. A separate inquiry under Order 20 Rule 12 of C.P.C. Is hereby ordered
>
> 5. Preliminary decree be drawn up accordingly.

3. The present appellants, having realised that they will be losing the property and were not intending to part with the share to their grand daughter, thereafter appears to have taken U turn and had challenged the judgment and decree on merits before the lower appellate Court. The lower appellate Court dismissed Regular Civil Appeal No.16/2010 thereby affirming the findings delivered by the trial Court, as such the present second appeal.

4. Mr Deshmukh, learned Counsel for the appellants has strenuously sought to urge that there was no admission given before the trial Court and trial Court has committed error apparent on the face of record in decreeing the suit in view of Order XII, Rule 6, upon recording admission given by the present appellants-defendants. According to him, the same can be termed as question of law.

5. After going through the observations made and having seen the memo of appeal submitted before the lower appellate Court, it is noticed that same was neither raised nor canvassed before the lower appellate Court. Not a single ground was raised to that effect before both the Courts below.

6. In view of above, in my opinion, no substantial question of law is involved in the present second appeal which is against concurrent findings. The second appeal being devoid of merits, stands dismissed.

(N.W. SAMBRE, J.)

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