

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.205 OF 2011
ALONG WITH
CIVIL APPLICATION NO.530 OF 2011**

Sayyadbibijahara Sayyad Mohammadpasha
Inamdar (Since deceased through LRs)

2. Sayyadabibi Afiya Dadapasha

Pirjade & Ors.

... Appellants

V/s.

Afatapasha Mahmmadpasha Inamdar & Ors.

... Respondents

.....

Mr. T. S. Ingale, Advocate for the Appellants.

Mr. Abhaysingh A. Shinde h/f. Mr. Rahul Kulkarni, Advocate for the
Respondent Nos.2 to 6, 7.1. to 7.6, 8 to 10, 15 to 21, 22.2 to 22.5 and
23 to 26.

.....

CORAM : R.K. DESHPANDE, J.

DATED : JULY 27, 2015.

P.C.

Regular Civil Suit No.210 of 1990 for partition and separate possession was dismissed by the trial Court on 4th April, 2002. Regular Civil Appeal No.129 of 2004 was allowed by the Lower Appellate Court on 29th October, 2010. The operative portion of the order passed by the Lower Appellate Court is reproduced below:

1. *The Appeal is allowed.*
2. *The Judgment and Decree passed by the Lower Appellate Court is hereby set aside.*
3. *The suit filed by the Appellant/Plaintiffs is decreed.*
4. *It is hereby declared the Plaintiffs No.2 & 3 and Defendant No.2, have 8/40th share each therein and the Defendant No.2 has 16/40th share in the suit properties.*
5. *It is hereby directed while effecting partition the portion of lands sold by the Defendant No.1, in favour of Defendants be put in the share of the Defendant No.1.*
6. *The properties, in possession of the tenants be given in the share of the Plaintiff Nos.2 & 3 as well as Defendant No.2, and the possession of their respective shares be handed over to them symbolically.*
7. *If the parties in possession of the tenants exceed the undivided shares of the Defendants as calculated above then the remaining portion may be given to the share of Defendant No.1.*

8. *The Decree be drawn up accordingly.*

9. *In the facts and circumstances of the case, the parties shall bear their respective costs throughout."*

2 The plaintiff is aggrieved by Clauses 5 and 6 of the order passed by the Lower Appellate Court. According to them, the total land in Gat Nos.90 and 268 admeasuring 50 Acre and 30 Guntha out of which land admeasuring 21 Acre and 24 Guntha was sold by the defendant no.1 to the other defendants by executing separate sale deeds dated 16th October, 1990 and 23rd October, 1990. He submits that the defendant no.1 was entirely 20 Acres of land in terms of the portion which has fallen to his share as per the decision of the Appellate Court which is 16/40th share. According to him, the land is sold in excess of this and the sale deeds are therefore not binding to that extent upon the appellant - plaintiff. He further submits that the Lower Appellate Court was wrong in stating that the portion of the land sold by the defendant no.1 should be allotted to him.

3 The parties are Muslim by religion. The successors become tenant in common. The property was sold by executing

the sale deeds dated 16th October, 1990 and 23rd October, 1990. The suit was filed on 26th October, 1990. The sale-deeds have not been challenged in the suit. No declaration is claimed that the sale of properties by defendant no.1 in favour of other defendants is not binding upon the plaintiffs. In the absence of such challenge, no substantial question of law arises out of the decision of the Lower Appellate Court. Second Appeal is dismissed.

4 In view of the order passed in the Second Appeal, Civil Application No.530 of 2011, does not survive and the same is disposed of accordingly.

JUDGE