

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 201 OF 2013

Mallayya Rachayya Swami (deceased) ... Appellants
through LRS

vs.

Sharanappa Baswant Birajdar (deceased) ... Respondents
through LRS

.....

Mr. G.M. Savagave for the appellants.

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CORAM : K.K. TATED, J.
DATE : 26TH AUGUST, 2015.

P.C.:

Heard learned counsel Mr. G.M. Savagave for the appellants.

2. This Second Appeal is preferred by heirs of defendant no.2 challenging the decree dated 31/12/2012 passed by the Appellate Court in Regular Civil Appeal No. 252 of 2003 confirming the judgement and decree dated 08/08/2003 passed by the 3rd Civil Judge, Sr. Division, Solapur in Regular Civil Suit No. 998 of 1983. The trial Court held that the original plaintiff and the defendants have share in the suit property. The operative part of the order of the trial Courts order reads thus:

“Suit is decreed as follows:

- I) Legal heirs of plaintiff no.1 shall have one-sixth share in the suit property. Legal heirs of plaintiff no.2 shall have one-sixth share in the suit property. Legal heirs of plaintiff no.3 shall have one-sixth share in the suit in the property.
- II) The plaintiffs are entitled to get partition and separate possession of their shares in the suit properties.
- III) Defendant no. 7 and 8 shall have one-sixth share each in the suit property. Deceased Tippanna had one-sixth share in the suit house property.
- IV) Defendant nos.3 to 6 shall have one-sixth share in the suit land.
- V) Copy of the decree be sent to Collector Solapur for effecting partition and separate possession by metes and bounds of the suit land.
- VI) Partition of the suit land shall be executed by the Collector Solapur or any gazetted subordinate of the Collector deputed by him this behalf, as per Sec.54 of Civil Procedure Code.
- VII) The partition of the suit house property shall be effected through Court Commissioner.
- VIII) Defendant no. 1 and 2 do pay costs of this suit to the plaintiffs and defendants shall bear their own costs.
- IX) A separate inquiry shall be conducted under Order 20, Rule 12 of C.P.C. for mesne profits in respect of suit house property, from the date of institution of this suit till effecting partition of suit house property. A preliminary decree be drawn-up accordingly.

3. Office note shows that the Second Appeal abated against some of the respondents i.e. plaintiffs and defendants. The issue in the present second appeal is about the shares between the members of HUF of the property.

4. In view of dismissal of the Second appeal against some of

the respondents, the judgement and decree passed by the trial Court stands confirmed.

5. In view of these facts, as a last chance four weeks time is granted to the appellants to take appropriate steps for restoration of Second Appeal against some of the respondents, failing which the Second Appeal shall stand dismissed without referring back to the Court.

6. Stand over to five weeks.

(K.K. TATED, J.)