

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

**SECOND APPEAL NO.791 OF 2011
ALONG WITH
CIVIL APPLICATION NO.45 OF 2014
ALONGWITH
CIVIL APPLICATION NO.1766 OF 2011
ALONGWITH
CIVIL APPLICATION NO.213 OF 2013
ALONGWITH
CIVIL APPLICATION NO.214 OF 2013**

Shamrao Rama Wadar V/s. Babutai Hariba Wadar (Since deceased through LRs) 1.a. Balasaheb Hariba Wadar & Ors.		Appellant Respondents
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Mr.Umesh Mankapure, Advocate for the Appellant.
Mr.Mahindra Deshmukh, Advocate for Respondent No.2.

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CORAM : RAVI K. DESHPANDE, J.

DATED : JULY 1, 2015.

P.C.

The trial Court passed a decree for partition and separate possession on 7th October, 2003 in Regular Civil Suit No.281 of 1991 in the Appellate Court. In the Appeal preferred by the defendant no.1 i.e. Regular Civil Appeal No.251 of 2003 and another Regular Civil Appeal No.252 of 2003 preferred by the defendant nos.2 and 3 the Appellate Court has reduced the share of the plaintiff from 1/20th to 1/28th in the suit land bearing

Gat Nos.936, 937, 939, 970 and 3263 of village Wangi. The original defendant no.1 is before this Court in this Second Appeal.

2 The contention of the learned counsel for the appellant is that the suit should have been dismissed for non-joinder of necessary parties, who were the three sisters out of which two died and remaining sister was not joined. It is also the contention that the sale-deeds executed in favour of the other defendants by the defendant no.1 have also not been challenged.

3 There is no challenge to the finding of facts recorded by the Courts below that the property was an ancestral property. The question of non-joinder of necessary parties was not raised in the written statement, but the trial Court as well as the Lower Appellate Court decided this point and it has been answered against the appellant. The plaintiff had given genealogy in the plaint which was not disputed in the written statement. In view of this, no substantial question of law arises on that point.

4 Similarly, in the written statement, no particulars were given about the sale of the property to the third person.

The Appellate Court has after taking into consideration modified the relief claimed by the plaintiff. No substantial question of law arises for consideration. Second Appeal is dismissed.

5 In view of the order passed in Second Appeal all Civil applications do not survive and are disposed of accordingly.

(RAVI K. DESHPANDE, J.)