

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

**SECOND APPEAL NO.22 OF 2011  
ALONG WITH  
CIVIL APPLICATION NO.59 OF 2011**

Shyamsunder D. Naik-Padave

(Since deceased through LRs)

1.Smita Shyamsunder Naik & Ors.

... Appellants

V/s.

Sumati Dnyanadeo Tavade

(Since deceased through Lrs)

a. Ramchandra Dnyanadeo Tavade & Ors.

... Respondents

.....  
Mr.V.S. Gokhale, Advocate for the Appellants.

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**CORAM : RAVI K. DESHPANDE, J.**

**DATED : JULY 6, 2015.**

**P.C.**

The trial Court decreed the Regular Civil Suit No.31 of 1997 for partition and separate possession on 25<sup>th</sup> July, 2002. Regular Civil Appeal No.130 of 2002 is dismissed by the Lower Appellate Court on 20<sup>th</sup> October, 2002. Hence, the Second Appeal is against the concurrent finding of facts.

2                      Undisputedly, the suit was filed by the daughters of Dattatraya against the real brothers for partition and separate

possession of the ancestral property in the year 1994. The appellants - defendant nos.1 and 2 raised a defence of ownership of the property on the basis of Will dated 6<sup>th</sup> March, 1976 executed by father Dattatraya who died on 24<sup>th</sup> December, 1977 and another Will dated 20<sup>th</sup> February, 1983 at Exhibit-162 executed by Saraswatibai, the mother who died on 20<sup>th</sup> April, 1985. Both the Courts have concurrently held that these two documents have not been established. There is no perversity in the findings recorded by the Court below holding that both the Wills have not been established.

3                Shri Gokhale, the learned counsel, appearing for the appellants has urged that the claim in the Second Appeal pertains to a property which is a dwelling house and on the date when the suit was filed, Section 23 of the Hindu Succession Act, 1956, disentitled the sisters to get any share in the dwelling house. Undisputedly, the suit was decided on 26<sup>th</sup> July, 2002 and Section 23 of the Hindu Succession Act, 1956, was deleted by an amendment brought into force on 9<sup>th</sup> September, 2005. The Courts below have relied upon the decision of the Apex Court in the case of ***G. Sekar Vs. Geetha & Ors.***<sup>1</sup>, wherein this Court has

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1 (2009) 6 SCC 1999

held that it is not a question of prospectivity or retrospectivity of the amendment brought into force. Even, if the amendment operates from the date of deletion i.e. from 9<sup>th</sup> September, 2005, the Court is bound to take into consideration the change in law and to mold the relief accordingly. In view of this, no substantial question of law arises. Second Appeal is dismissed.

4           In view of the order passed in Second Appeal, Civil Application No.59 of 2011 does not survive and is disposed of accordingly.

**(RAVI K. DESHPANDE, J.)**