

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

rpa

SECOND APPEAL NO.222 OF 2008

Sarojini Anil Sansare

.. Appellant

Vs.

David Balasaheb Khabade & Ors.

.. Respondents

....

None present.

....

CORAM : RAVI K. DESHPANDE, J.

DATED : JUNE 8, 2015.

P.C. :

Trial Court dismissed the Special Civil Suit No.97 of 1985 for partition and separate possession on 30th November, 1999. The Civil Appeal No.446 of 2000 preferred by the original plaintiff was partly allowed. The appellate Court declared that the plaintiff alongwith defendant nos.2 to 4 have 1/3rd share each in the suit property and also the defendant no.5. It is further held that 1/3rd share of defendant no.1 be allotted to her brothers and sisters. The appellate Court has held that Bapusaheb Khabade had authority to dispose of the suit property under the Will. Accordingly, the Appeal was partly allowed. The original defendant no.5 is before this Court in this Second Appeal.

2 The Second Appeal was filed in the year 2008. It was dismissed on 23rd July, 2008. After its restoration, it was again dismissed on 5th March, 2010. It was thereafter restored. On

21st January, 2014 it was again dismissed which was restored on 2nd May, 2014. On 31st July, 2014 it was again dismissed by an order which read thus:

“ The second appeal is pending for admission since the year 2008. It was dismissed in default on 23rd July, 2008. It was restored on 3rd October, 2013, with the cost of Rs.7000/-. The same was paid. The matter was thereafter listed on 20th January, 2014, none appeared for the appellant and, therefore, the matter was dismissed for want of prosecution with a cost of Rs.3,000/-. Thereafter, it was restored again on 2nd May, 2014. Yesterday, it was listed before this Court for admission. It was at the request of the counsel for the appellant that the matter was kept today. Inspite of second call, none appears for the appellant. Mr.Borkar, learned counsel, appears for the respondent No.2. The matter is, therefore, dismissed for want of prosecution.”

4 The matter was thereafter restored on 26th September, 2014. Today it was called on three occasions. None present for the appellant. There is no ground of perversity in recording the finding of facts by the Appellant Court. The Appellate Court has taken a possible view of the matter which does not give rise to any substantial question of law. The Second Appeal is dismissed.

(RAVI K. DESHPANDE, J.)