

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

**SECOND APPEAL NO. 295 OF 2012
WITH
CIVIL APPLICATION NO. 725 OF 2012
IN
S.A.NO. 295 OF 2012**

Atmaram Shambhoo Mhatre ... Appellant.
V/s.
Smt. Sumatibai Kashinath Thakur & Others. ... Respondents.

Mr. Prasad B. Kulkarni, Advocate, for the Appellant.
Mr. Rajesh Parab, Advocate for Respondent Nos. 1,2 & 5 to 7.

**CORAM : K. K. TATED, J.
DATE : 29th SEPTEMBER, 2015**

P.C. :

- 1 Heard the learned counsel for the parties.
- 2 This Court (Coram:S.C.Dharmadhikari,J.) by order dated 7th January, 2014 had issued notice to the other side only for a limited point that “whether the respondents sisters have any right to claim share in dwelling house under Section 23 of the Hindu Succession Act, 1955.”
- 3 The learned counsel Mr. Parab appearing on behalf of Respondent Nos. 1, 2, 5 to 7 submits that respondent no.1-plaintiff - Smt. Sumatibai Kashinath Thakur filed affidavit dated 28th September, 2015 through her Power of Attorney Holder - Jayadrath K. Thakur, stating that she did not want to claim any separate share in the dwelling house, except the

right to reside. Paras 8 and 9 of the said affidavit- cum- declaration read as under :

“8. I say that since the suit filed by my mother is prior to 2005 Amendment i.e. in the year 2004 as per the prevailing law at that time, the daughter could not claim partition in the house property.

9. I say that hence by this affidavit I am accepting the position of law prevailing at that time that the Plaintiff could not claim partition in the house property viz. House property being viz. Grampanchayat No.84 situate at Village Koprli, Tal. Uran, Dist. Raigad. However, Plaintiff right to reside in the above-mentioned house property will remain intact.”

4 In view of the a affidavit -cum- declaration filed by the respondent/ original plaintiff dated 28th September, 2015, nothing survives in the second appeal.

5 Hence, the second appeal is dismissed.

6 In view of the dismissal of the second appeal, nothing survives in the civil application no. 725 of 2012 and the same also stands dismissed as infructuous.

(K. K. TATED,J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed order.
