

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

**SECOND APPEAL NO.602 OF 2012
WITH
CIVIL APPLICATION NO.246 OF 2012**

Smt.Babibai Madhukar Gunjal ... Appellant

V/s.

Smt.Kesharbai Laxman Gunjal & Ors. ... Respondents

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Mr.M.M. Sathaye, Advocate for the Appellant.

Mr.P.N. Joshi i/b. Mr.Ajay S. Patil, Advocate for Respondent No.5.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 20, 2015.

P.C.

The trial Court decreed the suit for partition and separate possession granting 4/9th share to the plaintiff. The plaintiff preferred an Appeal with Regular Civil Appeal No.104 of 2008 claiming 2/3rd share in the suit property at the hands of Laxman. The said Appeal has been dismissed on 5th March, 2010 and hence this Second Appeal claiming 2/3rd share with the property in the hands of Laxman.

2 Undisputedly, the property in the hands of Laxman was an ancestral property. Laxman died in the year 1992 and he was survived by widow Kesharbai - defendant no.1, daughter Kamalabai - defendant no.2 and son Madhukar. The plaintiffs are the legal heirs of Madhukar who expired before filing of the suit in the year 2005. In this background, the contention of Shri Sathaye, the learned counsel appearing for the appellant that upon death of Laxman in the year 1992, there would be notional partition between Laxman and Madhukar, who were the coparceners constituting the joint family and therefore the property was not available for partition in the year 2005.

3 Undisputedly, it is not the case of any of the parties that the partition was effected. Upon coming into force of amended provisions of Section 6 of the Hindu Succession Act with effect from 9th September, 2005, the daughter would be treated as coparcener on par with the son. In view of this factual position, no fault can be found with the view taken by the Courts below that the plaintiffs would be entitled to 4/9th share in the suit property and there is no basis for the contention that the property should be deemed to have been notionally partitioned upon the death of Laxman in the year 1992. No substantial question of law arises. Second Appeal is dismissed.

4 In view of the order passed in Second Appeal, Civil Application No.246 of 2012 does not survive and is disposed of accordingly.

JUDGE