

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 WRIT PETITION NO. 232 OF 2016

PRABHAWATIBAI SANGRAMAPPA NIJWANTE THROUGH
HER POWER OF ATTORNEY HOLDER KASHINATH
VERSUS
GUNDAPPA VISHWANATH NIJWANTE DIED THROUGH
LRS LAXMIBAI GUNDAPPA NIJWANTE AND OTHE

Shri. Tukaram M. Venjane, Advocate, for petitioner.

Shri. Ajinkya P. Deshmukh, Advocate, for respondent
Nos.1 -A to 1-F and 2.

Shri. S.N. Kendre, Assistant Government Pleader fr
respondent No.3 and 6.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 234 of Special Civil Suit No.3/2010 presently pending in the Court of the Civil Judge Senior Division Ahmedpur. Heard both the sides.

2) The suit is filed for relief of declaration against present petitioner. The petitioner claims as under:- She is

the second wife of Sangramappa and original plaintiff No.1 Gundappa was brother of Sangramappa and plaintiff No.2 Bhagiratibai is sister of Sangramappa. Partition had taken place amongst the brothers in or about 1957 and Sangramappa died in the year 2010. Thus, the property which was held by Sangramappa was his separate property after the partition. That Sangramappa had no legal heirs who could succeed to the property. That with the consent of the first wife Hirkanbai, Sangramappa had married with her and so she can succeed to the property of Sangramappa. That, will is executed by Sangramappa in her favour and so the suit property is bequeathed to her.

3) On the basis of the rival pleadings, the trial Court has already framed issues and one issue is against the petitioner and she is expected to prove that she was legally wedded wife of Sangramappa. The application was given at Exhibit 234 by the present petitioner to frame two additional issues. Learned counsel for the petitioner conceded that the first issue suggested in the application was not proper issue because partition was already

admitted by the plaintiff. It is submitted that in view of section 10 of the Hindu Succession Act the second issue ought to have been framed. Section 10 shows that widow or widows of the deceased can succeed to the property. Due to prohibition of second marriage which came in force in the year 1956 if the deceased had married two wives prior to 1956 then the widows are entitled to get benefit of section 10. Same thing is observed by the trial Court. Thus, it is not possible to interfere in the order made by the trial Court. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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