

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

14 SECOND APPEAL NO. 288 OF 2012
WITH CA/5915/2012 IN SA/288/2012

ASHWINI SADASHIV NARWATE AND ANR
VERSUS
SADASHIV MAHADU NARWATE AND ORS

...
Advocate for Appellants : Patil Jayant R.
Advocate for Respondents 1 & 2 : Gunale V.D.

...
CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2016.

ORDER :

1. The learned counsel for appellants is heard for admission purpose. Some hearing was given to other side.

2. The suit was filed for partition by the present appellants against respondents. Plaintiff No. 1 - Ashwini is the daughter of plaintiff No. 2 - Savita and defendant No. 1 - Sadashiv. Defendant No. 1 is son of defendant No. 2 - Mahadu and second wife of Mahadu viz. Sulabai. Defendant No. 3 - Jijabai is the first wife of Mahadu.

3. It is the case of plaintiffs that suit property which is agricultural property is ancestral property of Mahadu. The suit is dismissed by the Courts below by holding that as Sulabai is

second wife of Mahadu, she is necessary party to the suit of partition.

4. The case needs to be looked from different angle, but that angle is also against the plaintiffs. Sadashiv is apparently illegitimate son of Mahadu as he is the son born from second wife of Mahadu. The evidence on record shows that in 1965 Mahadu married with said Sulabai. Thus, in ancestral property, Sadashiv can get share only after the death of Mahadu as he is illegitimate son and as he himself has no right against Mahadu. As Mahadu has no right to seek partition, his wife and daughter cannot have right to seek partition against Mahadu. For this reason, this Court holds that there is nothing arguable in the present matter. No substantial question of law as such is involved in the matter. The appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

SSC/