

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

SECOND APPEAL NO. 441 OF 2016

1. Devidas Budhaji Hambarde
Age : 58 Yrs., Occ. Agril.,
R/o : Dhanaj, Tq. Naigaon,
(Kh.), Dist. : Nanded.

2. Vimalbai Bhaurao Hambarde
Age : 48 Yrs., Occ. Agril.,
R/o : Dhanaj, Tq. Naigaon, **APPELLANT/**
(Kh.), Dist. : Nanded. **[ORI. DEFT. NOS. 6 & 7]**

3. Sheshrao Budhaji Hambarde
Age : 65 Yrs., Occ. Agril.,
R/o : Dhanaj, Tq. Naigaon,
(Kh.), Dist. : Nanded. **APPELLANT**

V E R S U S

1. Smt. Choutrabai Vikram Suryawanshi
Age : 76 Yrs., Occ. Household,
R/o : Dhanaj, Tq. Naigaon, **RESPONDENT/**
(Kh.), Dist. : Nanded. **[ORI. PLAINTIFF]**

2. Laxman Vikram Suryawanshi
Age : 45 Yrs., Occ. Household,
R/o : Dhanaj, Tq. Naigaon,

(Kh.), Dist. : Nanded.

3. Banarasbai Laxman Suryawanshi

Age : 45 Yrs., Occ. Household,

R/o : Dhanaj, Tq. Naigaon,

(Kh.), Dist. : Nanded.

4. Rukminbai Ranjit Suryawanshi

Age : 43 Yrs., Occ. Household,

R/o : Dhanaj, Tq. Naigaon,

(Kh.), Dist. : Nanded.

5. Anjanabai Ranjeet Suryawanshi

Age : 22 Yrs., Occ. Household,

R/o : Dhanaj, Tq. Naigaon,

(Kh.), Dist. : Nanded.

6. Pandurang Ranjeet Suryawanshi

Age : 21 Yrs., Occ. Household,

R/o : Dhanaj, Tq. Naigaon, ... **RESP.NOS. 2 TO 6/**

(Kh.), Dist. : Nanded. **[ORI. DEFT. NOS. 1 TO 5]**

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Mr. V.V.Bhavthankar, Advocate for Appellants.

Mr. A.V.Patil, Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 21/07/2016

ORAL JUDGMENT :

1. The Appeal is admitted on following substantial question of law.

[i] Whether the Courts below have committed error in not allotting the share of defendant No. 3 to the purchaser from defendant No. 3 when defendant No. 3 has admitted that she has sold the property under sale deed which was under challenge to the present appellants/original defendant Nos. 6 and 7 ?

2. Notice for the admission is waived by the learned counsel for the plaintiff and by consent heard both sides for final disposal.

3. The suit was filed for relief of partition and separate possession and consequential relief of executing sale deed by defendant No. 3 in favour of defendant Nos. 6 and 7 was also claimed. The Courts below have held that the plaintiff is entitled to get share in the suit property. The trial Court had held that the plaintiff was entitled to 5/12th share in the suit property and the first appellate Court in the Appeal filed by original defendant

No. 3 and present respondents modified the share and has made 1/3rd share in favour of the plaintiff.

4. No further relief is claimed by the plaintiff and defendants in the suit property. In view of these circumstances and as vendor of defendant Nos. 6 and 7 has admitted that her share is sold to defendant Nos. 6 and 7, the Courts below ought to have given direction and ought to have made order to the effect that original defendant Nos. 6 and 7 are entitled to get the property which will come to the share of defendant No. 3 in equitable partition. It further needs to be kept in mind that the present appellants will not get the specific portion which must have been shown by defendant No. 3 and they can get only the portion which will come to defendant No. 3 in equitable partition. Only this point is argued before this Court and so order is made.

5. The Appeal is partly allowed. The Judgments and decrees are modified. After equitable partition, the property which will come to defendant No. 3 is to be given to the present appellants/defendant Nos. 6 and 7. It is to be kept in mind that the present

appellants will have no right to claim the specific portion shown to be sold to them by defendant No. 3 and they are not entitled to obstruct the equitable partition for execution of the decree.

6. Decree is to be prepared accordingly.

[T.V.NALAWADE, J.]