

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

**Second Appeal No. 658 of 2012  
With  
Civil Application No.3881 of 2012  
And  
Civil Application No.14070 of 2012**

Balbhim S/o Motiram Savate. .. **Appellant.**

**Versus**

Premalabai Rajendra Gaikwad  
And Others. .. **Respondents.**

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Shri. C.V. Dharurkar, Advocate, for appellant.

Shri. R.D. Biradar, Advocate, for respondent Nos.1 & 2.

Shri. R.V. Gore, Advocate, for respondent No.3.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 15<sup>th</sup> MARCH 2016**

**ORDER:**

1) The appeal is filed by original defendant No.1 of Regular Civil Suit No.337/2002 which was pending in the Court of the Civil Judge, Senior Division, Latur. The suit was filed for relief of partition and separate possession by respondent Premalabai, sister of the

appellant. The trial Court has given 1/3rd share to her and this decision is confirmed by the first appellate Court. Both the sides are heard.

2) The suit was filed in respect of agricultural land bearing Gat No.43 (Survey No.53) admeasuring 2 hectares 2 R situated at village Kharola, Tahsil Renapur, District Latur. It is the case of the plaintiff that the suit property was ancestral property of Motiram. It is her case that defendant No.3 is second wife of Motiram and as the marriage has taken place during lifetime of the first wife, she is not entitled to anything. It is her case that defendant No.1 is her brother, son of defendant No.3. Defendant No.2 is the first wife of her father and so only plaintiff and defendant Nos.1 & 2 are entitled to have share in the suit property. It is her case that till Gudi-Padwa of the year 2000 defendant No.1 was giving crop share to her but he stopped giving crop share thereafter. It is her case that she demanded partition and her share but the defendant No.1 avoided to do so and so the cause of action took place for the suit.

3) Defendant Nos.1 and 3 filed joint written statement. They denied that the suit property is the ancestral property. They admitted relationship of plaintiff with them. They denied that defendant No.1 was giving crop share to the plaintiff.

4) The issues were framed on the basis of aforesaid pleadings. Only the plaintiff has given evidence. It is not disputed that father of the plaintiff had died about 23 years prior to the date of the suit, after 1956. The trial court decided the matter mainly on revenue record and it shows that the suit land was originally owned and possessed by one Sambha Irappa and Motiram Irappa (Exhibits 24 and 29). They were protected tenants of this land in the past and so under the provisions of the Tenancy Act they became the owner. There is revenue record to that effect. When there is such record it was necessary for defendant Nos.1 and 3 to show as to why the plaintiff is not entitled to get share in the suit property. As per the record it can be said that the suit property was self acquired property of Motiram.

5) Defendant No.1 is son of defendant No.3, issue from second wife who was not legally wedded wife. In view of the provisions of the Hindu Marriage Act [Section 16(3)] and the provisions of Hindu Succession Act the trial Court has held that defendant No.1 is entitled to get equal share as the property left behind by Motiram was the property of Motiram and it was not ancestral property. As defendant No.2 is widow, who was first wife of Motiram, 1/3rd share is given to her by the trial Court. This decision is confirmed by the first appellate Court and the findings are questions of fact and they are concurrent. In view of this record and the aforesaid circumstance that there is no evidence given by the defendants, no substantial question of law as such is involved in the matter.

6) In the result, the appeal stands dismissed. Civil Applications stand disposed of.

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

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