

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

905 SECOND APPEAL NO. 16 OF 2016
WITH CA/218/2016 IN SA/16/2016

KANTABAI SUBHASH ADSUL
VERSUS
GANGUBAI JANARDHAN BAWALE AND OTHERS

...
Advocate for Appellant : Gore Ravindra Vitthal

...
CORAM : T.V. NALAWADE, J.
DATED : 1st July, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.341/1997, which was pending in the Court of Civil Judge, Junior Division, Kallam and to challenge the judgment and decree of Regular Civil Appeal No. 12/2007, which was pending in the Court of Principal District Judge, Osmanabad. The suit filed against present appellant by respondent Gangubai, sister, for relief of partition and separate possession is decided in her favour. Heard the learned counsel for appellant.

2. It is the case of plaintiff that the suit properties which are four in number are ancestral properties of plaintiff and defendants. Defendant Nos. 2 to 4 are successors of deceased brother Subash. Chabu, father of plaintiff died 15 years prior to

the date of suit and suit was filed in the year 1997.

3. It is the case of plaintiff that she has equal share, 1/3rd share in the suit properties, but defendants are refusing to partition the property and so, cause of action has taken place.

4. Defendant No. 1 contested the suit by filing written statement. He admitted the relationship and he admitted that plaintiff has 1/3rd share. Defendant Nos. 2 to 4, successors of other brother, denied that plaintiff has 1/3rd share. On the basis of pleadings, issues were framed. Both the sides gave evidence. The Trial Court has given 1/9th share to plaintiff. This decision is confirmed by the First Appellate Court.

5. It is not disputed that the properties were ancestral properties of Chabu. He died in the year 1977. In view of this circumstance, notional partition needs to be effected and in the notional partition, Chabu would get 1/3rd share. His wife was already dead. This 1/3rd share of Chabu can be divided amongst his three issues and so, plaintiff gets 1/9th share. Along with Chabu, in the first partition two sons get 1/3rd share each. Thus, plaintiff was entitled to get only 1/9th share and accordingly, 1/9th share is given to the plaintiff. No substantial question of

law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

SSC/