

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

43 CIVIL APPLICATION NO. 106 OF 2016 WITH
CAST/35595/2015 IN SAST/35594/2015

RAHUL DHANANJAY KHURPE
VERSUS
MIRABAI APPA @ RAMA GAIKWAD AND ORS

...
Advocate for Applicant : Kudale Bhagwan S.
Advocate for Respondents 9 to 12 : Kendre N.D.

...
CORAM : T.V. NALAWADE, J.
DATED : 9th March, 2016.

ORDER :

1. Civil Application No. 106/2016 is filed for leave to file appeal by purchaser of the property from original defendant Nos. 2 to 5. Heard the learned counsel for applicant. Learned counsel Shri. Kendre is representing respondent Nos. 9 to 12. He has no objection to allow the application. He is representing one of the vendors. Other respondents are served, but nobody has turned up.

2. The learned counsel for applicant took this Court through the submissions made by both the sides before first appellate Court on the basis of which the appeal came to be allowed and some property in respect of which partition was claimed was excluded from consideration. He also took this

Court through operative part given by the First Appellate Court which shows that if totaling of the share given to the parties is done, the total becomes more than one and so, practically it will not be possible to partition the property as per the apportionment made by the First Appellate Court. He submitted that there was virtually collusion between the parties including the vendor and due to that, his rights will be affected.

3. In view of these circumstances, this Court holds that permission needs to be granted to the applicant, purchaser to file appeal. Application is allowed. Leave is granted to file appeal.

4. Notice in appeal. Learned counsel Shri. Kendre waives notice for respondent Nos. 9 to 12. Notice to other respondents made returnable on 14.6.2016. Call record and proceeding.

5. Office to give separate number to the application filed for stay. Interim relief is granted in terms of prayer clause 'B' till the next date.

[T.V. NALAWADE, J.]

ssc/