

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

WRIT PETITION NO. 2468 OF 2017

Rajak S/o Bapumiya Sayyad
and others

...PETITIONERS

VERSUS

Putalabee W/o Mansurkhan Pathan
Since deceased through her L.Rs.
Anwarkhan S/o Mansurkhan Pathan
and others

...RESPONDENTS

.....

Advocate for Petitioners : Mr. H.V. Tungar
Advocate for respondent Nos. 1-A to 1-D Mr.G. J. Kore
Advocate for respondent Nos. 4 and 6 : Mr. B. R. Kedar

**CORAM : V.K.JADHAV, J.
DATED : 11th DECEMBER, 2017.**

PER COURT :-

1. The learned counsel for the parties submits that the trial court has decreed the suit instituted by sisters Malanbee w/o Shaikh Hussain and Putalabee w/o Mansoorkhan Pathan and further held that both of them are entitled to share in the property viz, survey Nos. 9 and 23 half (½) portion and in the house property to the extent of 1/3rd (one third) and the land sold out from survey No.9 to defendant Nos. 3 and 4 shall be given in the partition of the

defendant No.2.

2. Being aggrieved by the same, the original defendant No.1 Bapumiya s/o Nabisaheb Sayad has preferred Regular Civil Appeal No.34 of 1984 before the District Court, Latur. The learned Additional District Judge, Latur held that decree of the trial court needs certain modification and correction, as during pendency of appeal, the appellant Bapumiya compromised the suit with respondent No.1 therein- Malanbee Shaikh Hussain (Plaintiff No.1) and by the said compromise, respondent No.1-Malanbee (Plaintiff No.1) sold her distinct half share in the residential house and also in survey Nos. 9 and 23 in favour of appellant-Bapumiya on accepting Rs.50,000/-. The lower Appellate Court has also observed that suit as regards the claim by respondent No.1-Malanbee against the appellant Bapumiya ought to be dismissed in view of compromise petition at Exh.48 and decree of trial court needs correction. Accordingly, the Additional District Judge, Latur by its Judgment and order dated 02.03.1993 partly allowed the appeal and further held that both the original plaintiffs are entitled to 1/3rd i.e. 5 anna 4 paise share in the suit property i.e. house property

and agricultural land bearing survey No. 9 (excluding the share in the land) purchased by original defendant Nos. 3 and 4 (sale deed Exh.81). The plaintiffs are also held to be entitled to 1/3rd share i.e. 5 annas and 4 paise in the suit property of agricultural land bearing No.23/B (excluding the share in the land purchased by deceased Ramchandra i.e. survey No.23/A). The plaintiffs are also held to be entitled to 1/3rd share in the suit house possessed by defendant Nos. 1 and 2. The lower Appellate Court has further held that in view of compromise filed at Exh.48, plaintiff No.1 Malanbee's suit for her share in the above said property and in the house property against original defendant No.1-Bapumiya stands dismissed.

3. The learned counsel appearing for the petitioners/ original judgment debtors and the counsel appearing for the respondent No.1 (deceased Putalabee, her legal heirs 1-A to 1-D) submits that by the impugned order dated 06.05.2008, which is confirmed by the Sub Divisional Officer, Additional Collector and Additional Commissioner, in the subsequent appeals, held that as per the decree passed by the Civil Court, the sisters are entitled for 1/3rd share together (1/6th

each). Learned counsel submits that plaintiff No.1 Malanbee has sold her share during pendency of appeal. Plaintiff No.1 Malanbee has compromised the matter with deceased Bapumiya, and as such, legal heirs of deceased Bapumiya are entitled to the share of plaintiff No.1-Malanbee. However, learned Tahsildar is not giving effect to the judgment and decree passed by the Civil Court, which has now attained the finality.

4. In view of above submissions, the legal heirs of original plaintiff-Putalabee has also filed an affidavit before this court contending therein that decree holder Putalabee/ her legal heirs are entitled for 1/6th share in the aforesaid suit property. In view of above, the matter is required to be remitted to Tahsildar, Renapur with certain directions.

5. Accordingly, the matter is remitted to Tahsildar, Renapur with direction to pass order afresh, by giving an opportunity of hearing to both sides and in tune with the judgment and decree passed by the Civil Court confirmed by the District Court and also by this Court. Needless to say that the order passed by the Tahsildar, Renapur dated 06.05.2008 and confirmed by the Sub Divisional Officer,

Latur on 22.8.2012 and Additional Collector, Latur vide order dated 26.09.2013 are hereby quashed and set aside.

6. The parties shall appear before the learned Tahsildar, Renapur, Dist. Latur on 28.12.2017.

7. Writ petition is accordingly disposed of.

(V.K.JADHAV, J.)

mta/-