

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

BENCH AT AURANGABAD.

WRIT PETITION NO.5816 OF 2013

Gayabai W/o Dasrao Ladane ... Petitioner.

Versus

Sayabai W/o Vithalrao Ladane. ... Respondent.

...
Mr.P.G.Godhamgaonkar, advocate holding for
Mr.M.D.Godhamgaonkar, advocate for the
petitioner.
Mr.B.N.Magar, advocate for Respondent Nos.1 to 6.
...

CORAM : S.V.GANGAPURWALA, J.

Date : 28.08.2017.

PER COURT :

1. The Respondent deceased Sayabai, had filed suit for partition and separate possession against the present petitioner claiming share from the property of deceased Dasrao. The petitioner though served, did not contest the matter. The decree was passed giving half share to the plaintiff. It was stated that Dasrao left

Smt.Gayabai widow of Dasrao and Sayabai mother of Dasrao. The present petitioner filed an appeal before the District. The appeal is also dismissed for default. Thereafter, application is filed for restoration of the appeal with an application for condonation of delay. The same is rejected. Aggrieved thereby, the present petition.

2. I have heard Mr.Godhamgaonkar, learned counsel for the petitioner and Mr.Magar, learned counsel for the Respondent.

3. After going through the decree and the nature of the dispute, it would appear that even if the present petitioner would have appeared and contested the suit, the decree would be the same. Deceased Dasrao died issueless, as such mother and widow would get half and precisely that is the decree passed. It is submitted by the learned counsel for the Respondent that even the decree stands executed.

4. Considering above, no purpose would be

served by again reopening the litigation. If the shares have changed and execution is pending then the change of shares can be considered in pending application for making preliminary decree final. However, if the same has become final, it need not be considered.

5. The Writ Petition is accordingly disposed of. No costs.

(S . V . GANGAPURWALA, J .)

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