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

**SECOND APPEAL NO. 318 OF 2017  
WITH  
CIVIL APPLICATION NO.5728 OF 2017**

Arjun Parvati Kalamkar,  
Age: 55 years, Occu: Farmer,  
At & Post : Ghargaon,  
Tal: Shrigonda,  
Dist. Ahmednagar

..APPELLANT

VERSUS

1. Subhadrabai Arjun Kalamkar,  
Age: 50 years, Occu: Household,
2. Dada Arjun Kalamkar,  
(Since dead, appellant was abated)
3. Akka Arjun Kalamkar @  
Sunita Bapurao Palkar,  
Age: 44 years, Occu: Household,  
R/o. Kashti (Sawantwadi),  
Laharepat, Tal. Shrigondha,  
Dist. Ahmednagar 414701
4. Manda alias Nanibai Arjun Kalamkar  
(Abated)

All the above R/o. Ghargaon,  
Tal. Shrigonda, Dist. Ahmednagar  
(Except respondent No.2)

..RESPONDENTS

Mr V. D. Sapkal, Advocate for appellant;  
Mr D. S. Manorkar, Advocate for respondent No.1 & 3

**CORAM : N.W. SAMBRE, J.**

**DATE : 20<sup>th</sup> June, 2017**

**ORAL ORDER**

Parvati and Dhondabai were blessed with four children of which the defendant in Regular Civil Suit No.220 of 1996, namely Arjun is one,

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whose wife and three issues filed suit for partition and separate possession claiming share in land Gat No.224, ad measuring 23 R and land Gat No.208 ad measuring 3 H and 37 R.

2. Learned 2nd Civil Judge Junior Division, Shrigonda vide judgment and order dated 23<sup>rd</sup> June, 2005 decreed the suit and held that the plaintiffs are entitled for 1/4<sup>th</sup> share in each of the suit properties bearing Gat Nos.208 and 224, situated at village Ghargaon, Tq. Shrigonda.

3. An appeal being Regular Civil Appeal No.66 of 2008 at the behest of defendant came to be partly allowed by judgment and decree dated 17<sup>th</sup> June, 2014, passed by the Principal District Judge, Ahmednagar. Thus, the present second appeal.

4. Amongst other the substantial questions of law as are sought to be raised are :-

(a) The judgment of the lower appellate Court is not in tune with the provisions of Order XLI and Section 107 of the Code of Civil Procedure as the appellate Court has neither considered the pleadings and evidence nor has discussed the same while allowing the appeal partly.

(b) Whether the suit at the behest of wife, during life time of her husband, seeking partition is maintainable or not?

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5. Though the learned Counsel appearing on behalf of respondents – original plaintiffs has tried to justify the judgments rendered by both the Courts below, still upon perusal of the judgment of the lower appellate Court it could be *prima facie* noticed that the lower appellate Court has wound up the judgment by recording two paragraphs of reasoning when it was expected of the appellate Court to consider the rival submissions of the parties, re-appreciate the evidence in the backdrop of pleadings and then record findings as to what the Trial Court has considered and whether the Trial Court is right or wrong in answering the issues. The judgment in this case could be termed as cryptic one without considering the pleadings and evidence. As such, in my opinion, the judgment rendered by the lower appellate Court, in the backdrop of the law laid down by the Apex Court in the matter of **Santosh Hazari vs. Purushottam Tiwari** reported in **(2001) 3 Supreme Court Cases 179** is not sustainable.

6. In the above referred backdrop, the judgment and decree dated 17<sup>th</sup> June, 2014, passed by the learned Principal District Judge, Ahmednagar, in Regular Civil Appeal No.66 of 2008, is hereby set aside.

The matter is remitted back to the learned Principal District Judge, Ahmednagar, for disposal according to law, in the light of the observations made herein above.

Parties to the present appeal agree that they shall appear before the lower appellate Court on 17<sup>th</sup> July, 2017 with their respective written notes of arguments.

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The parties further agree that they shall not seek unnecessary adjournment in the matter and shall co-operate the lower appellate Court for deciding the appeal expeditiously, particularly in the backdrop of the fact that the suit for partition instituted in 1996 at the behest of the respondent is not concluded uptill now.

The lower appellate Court is expected of to decide the appeal within a period of three months from the date of appearance of the parties before it.

With the above observations, the second appeal stands partly allowed. In view of disposal of second appeal, pending civil application does not survive and stands disposed of accordingly.

**(N.W. SAMBRE, J.)**

amj