

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

**SECOND APPEAL NO. 512 OF 2016
WITH
CIVIL APPLICATION NO. 15897 OF 2016
IN
SECOND APPEAL NO. 512 OF 2016**

Bajirao Vishwanath Khurde and Another ..APPELLANTS

VERSUS

Pallavi Bajirao Khurde and Another ..RESPONDENTS

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Mr. S.M. Vibhute, Advocate for appellants/applicants.

Mr. G.B. Patunkar, Advocate for respondents.

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CORAM : N.W. SAMBRE, J.

DATED : 13th JUNE, 2017

ORDER :

1. The appellants/original defendants suffered decree for partition and separate possession, which was confirmed in the appeal. Appellant No.1 - Bajirao claimed to be married to Respondent No.2 – Kamlabai and Appellant No.2 and Respondent No.1 were born out of the said wedlock. Out of matrimonial dispute, appellants i.e. father and son are residing together alongwith mother of Appellant No.1, whereas wife and daughter are residing together who sought partition.

2. Mr. Vibhute, learned Counsel for the appellants urged that as per Hindu Law, widow mother has every right to claim for partition and share in the ancestral property when it comes to the partition between the sons. So as to substantiate his contention, he has invited attention of this Court to Clause 315 of the Hindu Law by Mulla. He then urged that as such, judgments delivered by both the Courts below are required to be modified by incorporating share of widow mother.

3. Mr. Patunkar, learned Counsel for the respondents submits that widow mother is entitled for partition in ancestral property when it comes to the sons effecting the partition. However, such does not appear to be the case here. Here, on facts, it is wife and daughter who are seeking partition in ancestral property and the case cannot be termed to be one where sons are seeking partition. As such principle relied upon by Mr. Vibhute is hardly of any assistance.

4. Apart from above, it is to be noted that there are concurrent findings of fact recorded by both the Courts below. As such, in my opinion, appeal does not involve substantial question of law. He would also urge that the description of property seeking partition to the extent of 1H 85R out of 6H 93R is not properly carried out and in my opinion the said issue,

which is already appreciated by both the Courts, cannot be gone into while exercising jurisdiction of the second appellate jurisdiction.

5. At this stage, learned Counsel for the appellants/original defendants expressed his concern over the likely act of the respondents to indulge in disposal of share of minors by the original plaintiff – Kamlabai. Though said concern is not well founded, learned Counsel for the respondents/original plaintiffs submits that if the property received after partition with a share of minor daughter is to be disposed of, the same will be strictly in accordance with the principles of law, which governs the said issue. The submission made by learned Counsel for respondents is accepted. Appeal as such stands dismissed.

(N.W. SAMBRE, J.)

SSD