

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.900 OF 2017
IN
SECOND APPEAL NO.427 OF 2010**

Narayan Vitthal Gulekar (deceased)
and Savita Narayan Gulekar and Ors. ... Applicants
and
Madhukar Krishna Gulekar ... Appellant
versus
Narayan Vitthal Gulekar (deceased)
and Savita Narayan Gulekar and Ors. ... Respondents

Mr. A.B.Tajane, for Applicants/Org. Respondents.
Mr. Onkar Warange, for Respondents/Org. Appellant.

CORAM: S.J. KATHAWALLA, J.

DATE: 10th JULY, 2017

P.C.:

1. The Applicants are the original Plaintiffs in the Suit which was filed before the Trial Court for Partition being Suit No.98 of 1985. On 30-04-1988, the Suit was partly decreed and in case of two Survey numbers, partition was granted i.e. Survey Nos.196/5 and 198/2 and it was decided that the Plaintiffs are entitled to 1/4th share in the lands bearing the said two Survey numbers.

2. As regards the other properties, including land bearing Survey No. 127 Hissa No.12/K/1 and 214/6, it was decided by the Trial Court that they are self acquired properties of Defendant No.2. The Original Plaintiffs being aggrieved by the said Judgment and Decree, impugned the same before the Appellate Court by filing an

Appeal being No.122 of 1988. The Appellate Court confirmed the order passed by the learned Trial Court with a modification namely that the Original Plaintiffs were also granted 1/4th share in House No.64. The Judgment and Decree of the Appellate Court is dated 26-09-1995. Though the Second Appeal is filed in the year 1995 itself, the same was admitted 16 years after the date of its filing i.e. 07-01-2011.

3. The heirs of original Respondent No.1 have now filed the above Civil Application seeking permission of the Court to sell the land bearing Survey No.127, Hissa No.12/K/1. The learned Advocate for the Respondent/Org. Appellant has submitted that the issue as to whether property bearing Survey No.127, Hissa No.12/K/1 is indeed a self acquired property of Original Defendant Nos.1 and 2 or whether it is a joint property, is also the subject matter of the above Second Appeal. The decision in the above Second Appeal will have a bearing on the said issues. I am in agreement with the submission advanced on behalf of the Appellants. However, it is unfortunate that the Admission of the above Second Appeal filed in the year 1995, took 16 years. The heirs of Respondent Nos.1 and 2 are senior citizens (73 years old) and grave injustice will be caused to them if the Appeal is decided in their favour after several years and they are deprived of enjoying the fruits of the orders passed in their favour by the trial Court as well as the first Appellate Court. In view thereof, the following order is passed :

(i) Hearing of the above Second Appeal is expedited and peremptorily

fixed on 21st August, 2017 at 3.00 p.m.

(ii) R and P be called for.

(iii) The Civil Application is accordingly disposed of.

(S.J.KATHAWALLA, J.)