

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.637 OF 2016
WITH
CIVIL APPLICATION NO.1291 OF 2016
IN
SECOND APPEAL NO.637 OF 2016**

- | | | |
|----|--------------------------------------|---------------|
| 1. | Prakash Rama Sawant alias Acharekar | .Appellants / |
| 2. | Jankibai Rama Sawant alias Acharekar | Applicants |
| 3. | Pandharibai Raghunath Gawas | |
| 4. | Sanjivane Dashrath Gawas | |

Vs.

- | | | |
|----|--------------------------------------|--------------|
| 1. | Yashwant Rama Sawant alias Acharekar | .Respondents |
| 2. | Madhuri Manohar Naik | |
| 3. | Radha Krishna Gawade | |

Mr. A. S. Gawas, Advocate, for the Appellants/Applicants
Mr. A. A. Gharate, Advocate, for the Respondent Nos.1 to 3

CORAM : REVATI MOHITE DERE, J.

DATE : 03.10.2017

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. Rule.

3. Rule is made, returnable forthwith with the consent of the

parties and is taken up for final disposal.

4. By this Appeal, the Appellants have impugned the Judgment and Order dated 10.01.2014 passed by the learned Jt.C.J.J.D., Sawantwadi in R.C.S.No.91 of 2010 as well as the Judgment and Order dated 30.09.2015 passed by the learned Principal District Judge, Sindhudurg – Oros in R.C.A.No.37 of 2014.

5. Learned counsel for the Appellants on instructions states that the Appellants have no objection to the partition of the properties mentioned in Schedules 'A' & 'B' of the plaint. He submitted that in fact, partition has been effected of the properties mentioned in Schedules 'A' & 'B'.

6. Learned counsel for the Respondents states that the Appellants are not co-operating with the partition of the properties mentioned in Schedules 'A' & 'B'. Learned counsel for the Appellants states on instructions states that the Appellants are co-operating and will co-operate with the partition of the properties mentioned in Schedules 'A' & 'B'. Statement accepted.

7. As far as the house property mentioned in Schedule 'C' i. e. House No.218 situated at village – Ghodage, Taluka – Dodamarg, District – Sindhudurg is concerned, learned counsel for the Appellants states that the Appellant No.1 is staying in the said premises alongwith the Appellant No.2, who is aged about 81 years. He submits that if partition is effected during the life time of the Appellant No.2, the Appellant No.2 will get a very small portion of the said property, causing inconvenience and tremendous hardship to her. Learned counsel for the Respondents on instructions makes a statement that during the lifetime of the Appellant No.2, the Respondents will not insist / have the said property partitioned mentioned in Schedule 'C'. Statement accepted.

8. Both, learned counsel for the Appellants and the learned counsel for the Respondents state, that neither the Appellant No.1 nor the Respondents will have any objection, if the said property mentioned in Schedule 'C' is partitioned after the demise of the Appellant No.2. Statements accepted. Accordingly, the said property mentioned in Schedule 'C' shall not be partitioned during the life time of the Appellant No.2. In view of the aforesaid, nothing survives for consideration in the aforesaid Appeal and accordingly, the same is disposed of on the aforesaid terms.

9. In view of disposal of the Second Appeal, the Civil Application does not survive and same stands disposed of accordingly.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)