

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

SECOND APPEAL NO.735 OF 2017

Shantabai @ Subhabai Shama Bhoi & anr. ...APPELLANTS

**VERSUS**

Shantabai Ramlal Bhoi, Died through L.Rs.  
Ramlal Ninaji Bhoi & ors.

...RESPONDENTS

.....  
Shri Amey Sabnis, Advocate holding for  
Shri P.B. Gamot, Advocate for appellants

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CORAM:    A.M. DHAVALÉ, J.

DATED :    4th December, 2018.

**ORAL ORDER :**

1.            Heard Mr. Sabnis, learned counsel for the appellants. The appellants are original plaintiffs. As per genealogy, Ramchandra was the common ancestor. His wife Banabai died on 7.8.2008. They were having one daughter Shantabai and one son Shyam. Shyam died in 1969, leaving behind a widow and a son, Shantabai @ Subhabai (Since there are two Shantabai's, she will be referred to as Subhabai) and Rama (who are plaintiffs). The defendants are legal heirs of daughter Shantabai. The plaintiffs claimed partition and 3/4th share in suit house Grampanchayat House No.1089 at

Bodwad. At the time of funeral of Banabai, grandmother of plaintiff No.2, they learnt about the bogus sale deed executed by Banabai in favour of her daughter Shantabai. The execution thereof was challenged. The authority of Banabai was also challenged on the ground that she was not the sole owner of the suit house. The plaintiffs claimed that they had 2/3rd share, but made prayer for 3/4th share in the property.

2. The legal heirs of Shantabai contested the suit. The learned trial Judge partly decreed the suit, granting 1/6th share to each of the plaintiffs (He has shown as 35/210<sup>th</sup> share) each. He held that, the 7 defendants were entitled for 2/21th share. The first appellate Court dismissed the appeal. Hence this Second Appeal.

3. Learned Advocate Mr. Sabnis for the appellants submits that, there are concurrent findings of the Courts below and, therefore, he is not challenging the execution of sale deed by deceased Banabai in favour of her daughter Shantabai, the common ancestor of the defendants. However, he claims that, the calculation of shares is not correct. According to him, Ramchandra died about 70 years before filing of the suit in 2008. That time, partition opened and Ramchandra, Shyam and Banabai would each get 1/3rd share, but as the daughters were not getting any share, the share of Ramchandra will go to Banabai and Shyam, and they would have 1/2

share. He argued that, the plaintiffs were entitled for half share even though Banabai's half share was sold to daughter Shantabai.

4. Mr. Sabnis is presupposing that deceased Ramchandra died before the introduction of Hindu Succession Act, 1956 and, therefore, he claims that Shantabai inherited no share from Ramchandra. However, both the Courts below have given one third share to Shantabai, Banabai and deceased Shyam on the death of Ramchandrabai, and Banabai's one third share was proved to be sold to Shantabai and thus, Shantabai's heirs got two third share and the plaintiff's legal heirs were given one third share. Mr. Sabnis fairly concedes that there is no material to show that deceased Ramchandra died before 1956 and, therefore, Shantabai inherited no share from her deceased father. In view of this factual situation, the concurrent findings of both the courts in respect of facts cannot be interfered. No substantial question of law has been raised and, therefore, the appeal deserves to be dismissed and is accordingly dismissed in limine.

( A.M. DHAVALÉ )  
JUDGE

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