

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

**SECOND APPEAL NO.59 OF 1990
with
CIVIL APPLICATION NO.415 OF 1990**

Harishchandra Vishnu Nachankar
since deceased, through:

1. Smt.Mahanand Harishchandra Nachankar & Ors. ... Appellants

Vs.

Bhagirathi Vishnu Nachankar

... Respondent

Mr.P.J. Shinde for the Appellants

Mr.S.M. Kazi, for Respondent Nos.3 and 5

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MARCH 9, 2018**

P.C. :

1. This Second Appeal is directed against the judgment and order dated 10.8.1984 passed by the learned Civil Judge, Senior Division, Ratnagiri in Regular Civil Suit No.49 of 1978 confirmed by the first Appellate Court, Ratnagiri thereby dismissing the appeal No.201 of 1984 vide order dated 17.11.1989. The original plaintiffs have filed the suit for partition against all the original defendants i.e., the respondents. The trial Court has partly decreed the suit by giving 124th share to the plaintiffs and other respondents. The trial Court held that the house property i.e., house No.2227, is a joint

family property and to be divided amongst the co-sharers. It however, declared that house No.2228 is to be allotted to the share of defendant No.12 as it has accepted the claim of the defendant No.12 that the said house was constructed by him and is his self acquired property. This particular finding was challenged by the plaintiff in first appeal. The first appellate Court has maintained the finding of the trial Court and dismissed the appeal, against which this Second Appeal is filed by the original plaintiffs.

2. Thus, it is clear that this Appeal involves a limited issue of partition of house No.2228 as claimed by the appellants/plaintiffs. On perusal of the record, it is found that the appellants have moved an application No.1423 of 2005 requesting the Court to delete respondent No.12a i.e., Radhabai Krishna Nachankar and this Court by order dated 10.2.2011 has deleted the name of respondent No.12a, who is the main contesting defendant in the Second Appeal in view of the issue involved in the appeal. As her name is deleted by this Court, nothing remains in this Appeal.

3. The learned Counsel for the appellants fairly concedes that that respondent No.12a, the legal heir of respondent No.12, who was the main contesting party in respect of house No.2228, is not

a party as a respondent and, therefore, the claim of the appellants in respect of the said house, cannot be agitated and decided.

4. In the circumstances of the case, the appeal is dismissed. Civil Application No.415 of 1990 also stands dismissed.

(MRIDULA BHATKAR, J.)