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

*SECOND APPEAL NO. 445 OF 2016
with
CIVIL APPLICATION NO. 904 OF 2016*

Mr. Bajirao Mahadu Potekar

Since deceased through his heirs & L.Rs.

1 A. Dattatraya Bajirao Potekar & Ors. ...Appellants/Applicants.

V/s.

Mr. Bhagwan Shivram Shinde

Since deceased through his heirs & L.Rs.

1 A. Dattatraya Bhagwan Shinde & Ors. ... Respondents.

Mr. Kisan B. Sonwalkar for the Appellants/Applicants.

Mr. Ajay Joshi for Respondent No.1 K to 1 M.

CORAM : N.M. Jamdar, J.

DATE : 30 January, 2018.

Oral Order :-

Heard the learned Counsel for the Appellants. The Respondent – Plaintiff filed a suit bearing No. 254 of 1996 in the Court of Civil Judge, Junior Division, Malshiras for partition and separate possession. The learned Civil Judge dismissed the suit by judgment and order dated 29 June 2005.

2. Regular Civil Appeal No. 41 of 2005 was filed by the Respondent – Plaintiff in the District Court, Malshiras which was

allowed by the learned District Judge by judgment and order dated 23 September 2015.

3. The learned Counsel for the Appellants contended that the Respondents – Plaintiffs cannot seek partition when Shevantabai Sadashiv Shinde was alive. However, this contention as rightly noted by the learned District Judge, does not survive as Shevantabai expired during the pendency of the suit. There is no dispute regarding her $\frac{1}{2}$ share in the property. The learned Counsel for the Appellants submitted that the finding of the learned District Judge that the Appellants – Original Plaintiff has inherited the share of deceased Shevantabai, is not correct as she had three sons. However, even assuming so, the so called other claimants have not raised any objection. The Appellants, who does not have direct claim to the share of Shevantabai, cannot make a grievance regarding possible *inter-se* dispute between the heirs of deceased Shevantabai, which includes the Respondents – Plaintiffs.

4. In these circumstances, there is no error committed by the learned District Judge in allowing the First Appeal and granting the partition. If any dispute arises in future in respect of the share of Shevantabai, it will be considered on its own merits. The Second Appeal is dismissed. Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)