

2. The trial Court held that the respondent No. 2 - plaintiff is entitled for partition and separate of her 1/7th share in the suit property. The order of the trial Court came to be challenged by way of an Appeal by the present appellants before the learned First Appellate Court. The First Appellate Court modified the decree of the trial Court and held that the respondent No.1 - original defendant No.7 – Suresh Wamanrao Gaikwad is entitled to retain 4/7th share in the suit property. Appellant No.1 executed Development Agreement dated 13/11/1998 in favour of Suresh Wamanrao Gaikwad – defendant No.1. The Courts below held that the plaintiff has undivided share in the suit property. There is nothing on record to show that there is an earlier partition, nor a claim to that effect was made. The property admittedly is an ancestral property in respect of which the Courts below have concurrently found the plaintiff to have 1/7th share. I do not find any reason to interfere with the concurrent findings of fact recorded by the Courts below. The present Appeal does not involve any substantial question of law.

3. Learned Counsel for the appellants, however, submits that the Appellate Court while modifying the decree has virtually granted the respondent No.1 – original defendant No. 7 - Suresh Wamanrao Gaikwad the relief of Specific Performance. He would submit that once it is found that the partition is not effected by metes and bounds, respondent No. 7 – Suresh Gaikwad is not entitled to remain in possession by virtue of the development agreement executed by appellant No.1 in favour of respondent No.7 – Suresh. He would submit that the possession of original defendant No. 7- Suresh in the suit property is illegal. In support of his submissions he would rely upon the decision of the Supreme Court in the case of **Ramdas v/s. Sitabai and others** reported in **(2009) 7 SCC 444**.

4. In my opinion there is no substance in the submissions of learned Counsel for the appellants. Once the Courts below have come to the conclusion in a connected Regular Civil Suit No. 194 of 2001 that the Development Agreement executed in favour of the defendant No.7 – Suresh

Gaikwad subsists, the Appellate Court has only modified the decree in terms that defendant No.7 - Suresh Gaikwad is entitled to retain 4/7th share in the suit property from out of the share of appellants. This obviously will not tantamount to a decree of Specific Performance. The Appellate Court has further held that the parties are entitled to partition of the share and separate possession in terms of the decree of the Appellate Court. It has been held that defendant No.7 – Suresh Gaikwad is entitled to 4/7th share in the suit property 1A whereas in the suit property 1B Suresh Gaikwad has been entitled to 3/7th share in view of the development agreement which is held to be valid. It has been further observed that Precept shall be sent to the District Collector under Section 54 of the Code of Civil Procedure. The partition will obviously be in terms of the decree of the Appellate Court and parties will be entitled to their share and separate possession as per the decree.

5. In this view of the matter, I do not find substance in the arguments of learned Counsel for the appellants that the

possession has been handed over to the plaintiffs without partitioning property by metes and bounds. With this observation, the appeal is dismissed.

(M.S.KARNIK, J.)