

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

**SECOND APPEAL NO.486 OF 2019  
WITH  
CIVIL APPLICATION (ST) NO.11943 OF 2019  
IN  
REJECTED CASE NO.2147 OF 2019**

Shri.Rajesh Dagadu Chougule & Ors. ...Appellants  
V/s.  
Sanjay Dagdu Chougule & Ors. ...Respondents

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Mr.Vikas B. Tapkir for the Applicant.

Mr.G.R. Mirajkar Respondent No.4 present in person.

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**CORAM : S.C. GUPTE, J.**

**DATE : NOVEMBER 26, 2019**

**P.C.:**

(In Civil Application (St) No. 11943/2019)

1. In Second Appeal (St) No. 33178 of 2018, which was dismissed for default on 28<sup>th</sup> February, 2019, Civil Application (St) No. 11943 of 2019 has been taken out for recalling of that order and restoration of the second appeal.
2. For the reasons stated in the civil application, the order dated 28<sup>th</sup> February, 2019 is recalled and set aside and the second appeal is restored to file. Registry to number the second appeal.
3. Civil application is allowed and disposed of accordingly.

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(In Second Appeal (St) No. 33178/2018 & Second Appeal No.486/2019)

1. The Second appeal restored today and the companion second appeal, Second Appeal No. 486 of 2019, are taken up for admission.

2. After the matter has been heard at some length, it is agreed between learned counsel for the parties that Second Appeal No. 486/2019, which challenges dismissal of the appeal filed by the original defendant in the present partition suit before the lower appellate court may be dismissed and so far as the other companion appeal viz. Second Appeal (St) No. 33178/2018 is concerned (the appeal which is restored today), the appeal may be admitted on substantial question of law to be framed by this Court. It is accordingly ordered as follows:-

(i) Second Appeal No.486 of 2019 is dismissed.

(ii) Second Appeal (St) No. 33178 of 2018 is admitted on the following substantial question of law :

Whether the lower appellate court was right in law in decreeing the plaintiff's suit for partition and separate share of Gat No. 114/2/4, considering that it was the plaintiff's own case that the suit properties consisting of Gat Nos. 114/2/4 and 115/4 were already partitioned between two sons of Tulshiram, viz., Sambhu (predecessor in title of the plaintiff) and Gajendra, Gat No. 114/2/4 being allotted to Gajendra and Gat No.115/4 to Sambhu?

3. It is clarified that dismissal of Second Appeal No. 486 of 2019, as above, is on the footing that the appellant (original defendant no.2), who is admittedly born to Dagdu out of a wed-lock during the subsistence his first marriage, has no right to the joint family property during his father's lifetime. The entitlement of defendant no.2 to a share in his father's property after the father's death, is not being decided one way or the other. As held by the Supreme Court in the case of **Revanasiddappa and**

***Another Vs. Mallikarjun And Others [(2011) 11 Supreme Court Cases 1]***, defendant no.2, as a child of a void marriage, is entitled to his parents' property after their death, whether self-acquired or ancestral. Dismissal of the appeal, accordingly, does not disentitle defendant no.2 from claiming any share in the property of his father Dagadu after the latter's death.

4. The appellant in Second Appeal (St) No.33178 of 2018 to file a paper-book within a period of eight weeks from today. Appeal to come for hearing in due course. Respondent No.4 waives notice.

5. Insofar as the suit property bearing Gat No.114/2/4 is concerned, it is ordered by way of an interim order in the pending second appeal that execution proceedings in respect of the decree of the lower appellate court impugned herein may continue before the Executing Court, but no possession or separate share shall be given to the plaintiff.

**[S.C. GUPTE, J.]**