

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

SECOND APPEAL 674 OF 2017

(Satish Dnyaneshwar Kale and ors..vs.. Chabutai Bhimrao Bhoyar thr LR's & ors)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Ms. D.V. Sapkal, counsel for the appellants.
Mr. S.M. Vaishnav, counsel for respondents 1(ii) to (vi) & 2.

CORAM: ROHIT B. DEO, J.

DATE: 26th APRIL, 2019.

The following substantial question arises:

*“Whether the failure of the plaintiffs to implead
Mamta Pramod Bhoyar, who admittedly was the
wife and class-I legal heir of Pramod, renders suit
for partition and separate possession not
maintainable?”*

2 Concededly, Smt. Mamta Pramod Bhoyar was
not a party to the suit brought for partition and separate
possession.

3 The dispute is settled as regards respondent 2 –
Ms. Monali. She has relinquished her share in consideration
of receipt of Rs. 4 lacs. This is recorded in the order dated
15.4.2019.

4 In view of the compromise praecipe which is signed by the appellants and respondent 2 - Ms. Monali, the compromise is recorded and it is declared that Ms. Monali shall have no claim against the present appellants as regards the property mentioned in the compromise praecipe.

5 In so far as the substantial question of law formulated, it is fairly conceded by Mr. S.M. Vaishnav that Smt. Mamta was a necessary party to the suit of partition. Mr. Vaishnav states on instructions, that the judgments impugned may be set aside and the matter be remitted to the trial Court with liberty to the plaintiffs to implead Smt. Mamta Bhoyar as party defendant.

6 The judgments impugned are set aside and the matter is remitted to the trial Court. The plaintiffs shall implead Smt. Mamta Pramod Bhoyar as party defendant and the suit shall be decided afresh.

7 The trial Court is expected to decide the Regular Civil Suit 48 of 2004 as expeditiously as possible and in any event within one year.

JUDGE