

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 10174 OF 2021
IN
SECOND APPEAL NO. 392 OF 2021**

1. Vishwanath s/o Yadavrao Paul
Died through his L.Rs. -

1-1) Tulsabai w/o Vishwanath Paul (Died)
and Ors.

**= APPLICANTS
(Orig.Defendants)**

VERSUS

Rukhminibai @ Jaishree w/o Babasaheb
Paul

**= RESPONDENT
(Orig.Plaintiff)**

Mr.PN Surwase, Advocate for Applicants;

Mr.Milind M.Patil-Beedkar, Advocate for Respondent.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 21st October, 2021.

PER COURT :-

1. The Second Appeal has been admitted by a separate order by framing substantial question of law. The first Appellate Court has granted 1/3rd share. However, taking into consideration the genealogy, prima facie, it appears that the plaintiff would be entitled to get 1/5th share. Though the substantial question of law, as to how much would be share of the plaintiff, has been framed, this observation that the plaintiff would

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be having 1/5th share is a prima facie opinion taking into consideration the genealogy. As per the decree that has been passed, 1/3rd share has been granted to the plaintiff. Instead of staying the entire decree, it would be in the interest of the parties to allow the Collector concerned and/or any officer, appointed by him to effect partition of the suit properties to the extent of 1/5th share. If at all this Court comes to a conclusion that the plaintiff is entitled to get more share than 1/5th, then it would be separated once again at that time. But, minimum share of the plaintiff would be 1/5th. There is no hurdle to direct the authorities to go ahead with the partition and separation to the extent of 1/5th, as it would give source of income to the plaintiff also. Hence, following order is passed, -

ORDER

- i. The Civil Application is hereby partly allowed.
- ii. The decree passed by the learned Judge of the First Appellate Court, i.e. learned District Judge-4, Parbhani on 29.6.2020 in Regular Civil Appeal No.

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13/2016, be executed to the extent of 1/5th of the suit properties, i.e. agricultural lands as well as the house properties. There shall be stay in respect of partition and separate possession of rest of the portion of the suit properties till final conclusion and decree in the Second Appeal.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV