

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

SECOND APPEAL NO.413 OF 1992

**ARUN NAGNATH KULKARNI and OTHERS.
VERSUS
RAMCHANDRA PANDHARINATH KULKARNI and OTHERS.**

...
Advocate for Appellants : Mr. Kadam h/f. Mr. K.B. Bhise
Advocate for Respondent : Mr. Shomit Salunke h/f. Mr. S.S. Choudhari
...

CORAM : MANGESH S. PATIL, J.

DATE : 21.03.2022

PER COURT :

Learned advocate Mr. Kadam holding for Mr. Bhise for the appellant seeks time.

2. The appellants are the original plaintiffs who had succeeded in having a decree for partition and separate possession in respect of both the suit properties Survey No.202 and 203 with a declaration that the sale deed dated 29.10.1968 executed by respondent Nos.1 and 2 in favour of the respondent No.3 was null and void and was not binding on their share. The lower appellate court allowed the respondent No.2's appeal partly. It confirmed the judgment and decree to the extent of granting the share to the appellants in suit property survey No.202, however, held that they were not entitled to take exception to the sale deed dated 29.10.1968 and did not allot any share therein.

3. As can be seen the respondent No.2 who was the defendant

No.2 and the sole appellant before the lower appellate court has died long back and the Second Appeal stood disposed of as abated as against him by the order dated 18.03.2015.

4. As is mentioned in the Second Appeal memo the original defendant No.3 Nagnath Pandharinath Kulkarni was already dead even before the Second Appeal was filed. The sale deed was executed in his favour. His legal heirs are also not on the record.

5. Considering the aforementioned facts and circumstances, the appeal cannot survive against the surviving respondents namely respondent Nos.1 and 4 alone. It is dismissed in entirety.

(MANGESH S. PATIL, J.)

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