

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

SECOND APPEAL NO. 106 OF 2022

Pandurang s/o Bhaguji Ingale (Since Deceased)

Through his LRs.

1. Mahanandabai w/o Pandurang Ingale & Ors ... Appellants

Versus

Sunita w/o Ramling Ingale and others ... Respondents

....

Mr. V. D. Salunke, Advocate for appellants

Mr. Satej S. Jadhav, Advocate for respondent Nos. 1 to 4

....

CORAM : R. G. AVACHAT, J.

DATED : 23rd JUNE, 2022

PER COURT :-

. This is original defendant No.2's Second Appeal. It is a case of concurrent finding of facts. It was a suit, Regular Civil Suit No.1/2001 for partition and separate possession of the agricultural lands. A suit was filed by the mother on behalf of her three minor children against her husband and the appellant herein. The appellant is none other than the real brother of the original defendant No.1. The defendant No.2 claimed to have purchased the suit land from defendant No.1 (his real brother). According to him, the sale was for legal necessity. Post sale of the suit land, the vendor / original

defendant No.1 purchased a plot/house site and the admission to that effect was sought to be pointed out.

It was a case of the plaintiffs that original defendant No.1 had various vices. His brother had got executed the sale-deed from him.

2. Admittedly, the suit land was the ancestral property of the plaintiffs and the defendant No.1. The plaintiffs No. 2 to 4, minor children of the defendant No.1 have undivided share in the suit land. If the partition of the land takes place between the father and his children, the mother is entitled to have a share equal to that of a son. The trial Court has, therefore, rightly declared the plaintiffs to have $\frac{1}{5}^{\text{th}}$ share each. The sale-deed executed by the original defendant No.1 in favour of the appellant herein has been held to be not binding on the shares of the plaintiffs/respondents No. 1 to 4 herein.

3. On re-appreciation of the evidence in the case, the first appellate Court has confirmed the judgment and decree passed by the trial Court.

4. After having gone through the judgment of both the Courts below, this Court finds that no substantial question of law to be involved in this second appeal.

5. The appeal therefore stands dismissed.

6. In view of dismissal of the appeal, civil application No.2784 of 2022 does not survive. The same is therefore disposed of.

[R. G. AVACHAT, J.]

SMS