

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

**SECOND APPEAL NO.228 OF 2020
WITH
CA/4253/2020 IN SA/228/2020**

**NARAYAN GANPATRAO AGLAVE AND ANOTHER
VERSUS
GAULANBAI SHIVAJI PAUL AND OTHERS**

...
Advocate for Appellants : Mr. R.O. Awasarmol h/f. Mr. Ramesh I. Wakade
...

CORAM : MANGESH S. PATIL, J.

DATED : 27 APRIL 2022

PER COURT :

1. Heard learned advocate Mr. Awasarmol h/f Mr. Ramesh Wakade for the appellants.
2. This is a second appeal by the original defendant Nos.1 and 2, who have suffered a decree for partition and separate possession of the suit property, which is an agricultural land from Gut No. 59 of village Adgaon, Taluka Purna, Dist. Parbhani.
3. There is no dispute about the genealogy or even about the fact that the suit property was the ancestral property which was standing in the name of the father, who had transferred it in the name of his wife Geetabai who died on 15 August 2009. There is no dispute about the fact that the appellant no.1 had sold the suit property to his wife by way of registered sale

deed.

4. Though the appellants had come with a plea of previous partition, neither they insisted for formulation of any specific issue nor did they seek it to be formulated as a point for determination before the lower appellate court.

5. Similarly, though it was agitated that the appellant no.1 had also sold 20 Are portion to one Navnath, but that was not included in the hotchpot. However, again, the appellants had not insisted for any issue to be framed in that regard. At the most it can be said that the rest of the parties do not intend to claim any share in that property. They can be said to have waived it. However that cannot non suit, preventing them from claiming the share in the suit property.

6. Similarly, though the appellants had come up with a case of the sisters having relinquished their share in writing on a stamp paper of Rs.100, admittedly, it was not registered though it was compulsorily registerable under Section 17 of the Registration Act, 1908.

7. Both the courts below have concurrently held the facts to have been duly proved sufficient to effect partition and separation of the shares.

8. No substantial question of law arises in this second appeal. It is dismissed with costs.

9. Pending civil application is disposed of.

(MANGESH S. PATIL, J.)