

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

**933 SECOND APPEAL NO.169 OF 2022
WITH CA/4726/2022 IN SA/169/2022**

**ANAND MOHANLAL GANDHI AND ORS
VERSUS
SUNITA SANJAY IPPAR AND ORS**

...

Advocate for Appellants : Mr. Shah Subodh P.
Advocate for Respondent No. 1: Mr. Satyajit S. Bora.

**CORAM : MANGESH S. PATIL, J.
DATE : 29.03.2022.**

PER COURT :

Leave granted to correct the names in the civil application.

2. Heard learned advocate Mr. Shah for the appellant and the learned advocate Mr. Bora who appears for the respondent No. 1 who is the original plaintiff.

3. I have carefully gone through the judgments of the courts below. There is a concurrent finding of fact that the suit property was inherited by Dattatraya who was the father of plaintiff Sunita from his maternal side and was his separate property. It also appears that name of her mother Indubai was appearing in the revenue record of the suit property. Being an ostensible owner she sold it to the appellant under a registered sale-deed in the year 2010 that too during lifetime of Dattatraya. The respondent/plaintiff filed a suit for partition in the year 2012. Dattatraya along with his wife Indubai contested the suit by filing a common written statement denying the claim.

4. In spite of having reached to a conclusion in aforesaid lines, the suit was dismissed by the trial court but the lower appellate court has granted a share to the respondent Sunita.

5. The second appeal is **admitted** on following substantial question of law :

" Whether a daughter can file a suit for partition of a separate property of her father during his lifetime taking exception to its sale deed executed by her mother even when he himself never challenged it and then can succeed to have a share merely because he dies during pendency of the suit ?"

6. Issue notice to the respondents, returnable on 07.06.2022. Learned advocate Mr. Bore waives service for the respondent No. 1. There shall be interim relief in the form of stay to the execution of the judgment and decree under challenge till final disposal of the second appeal.

7. The Civil Application for stay is disposed of.

(MANGESH S. PATIL, J.)

mkd/-