

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 89 OF 2020  
ALONGWITH  
CIVIL APPLICATION NO. 59 OF 2020  
IN  
SECOND APPEAL NO. 89 OF 2020**

Ganesh Bharat Hunge and Others ...Appellants  
vs.  
Dattatrya Shamrao Hunge and Others ...Respondents

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Mr. Shriram S. Choudhari - Advocate for the Appellants

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**CORAM : S. M. MODAK, J.**

**DATE : 27<sup>th</sup> JULY, 2022**

**P. C. :-**

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1. Heard learned Advocate for the Appellants, who were defendant Nos. 9 and 10 before the Trial Court. Whereas present Respondent No. 1 was the Plaintiff. The present Respondent Nos. 2 to 7 were Defendant Nos. 3 to 7 before the Trial Court. When the Plaintiff filed the suit for partition, he has sought for partition of the suit properties described in para no. 2 of the Trial Court Judgment. After appearance of defendant Nos. 9 and 10 they have pleaded that there are certain other lands which were not included in the suit lands. They are described in para no. 10-A of the Trial Court Judgment. The Defendant Nos. 9 and 10 have filed counter

claim seeking partition of those lands.

2. Plaintiff disputed the said counter claim and pleaded that in fact father of Defendant Nos. 9 and 10, who was Defendant No. 8, was already allotted two lands described in para no. 10-B, as per the Trial Court Judgment as per the earlier partition.

3. In the meantime, Defendant Nos. 1 to 7 have admitted the claim and accordingly, the Plaintiff has withdrawn the suit. It is referred by the Trial Court in para no. 16 of the trial Court Judgment.

4. In view of the above, the inquiry was limited to the properties as mentioned in the counter claim. After evidence, the Trial Court has accepted that there was partition as pleaded by the plaintiff and dismissed the counter claim.

5. Defendant Nos. 9 and 10 could not succeed in the First Appeal also and it was dismissed. That is how present Second Appeal is filed. The grievance of the Appellants is that there is no convincing evidence and findings by the Courts below on theory of partition put up by the Plaintiff is erroneous.

6. Issue notice before admission to the Respondents, returnable on 07/09/2022.

7. Stand over to 07/09/2022.

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8. Defendant Nos. 9 and 10 who are Appellants are seeking stay to the execution of the impugned judgment. The First Appellate Court by impugned judgment has dismissed the First Appeal filed by these Appellants and thereby confirmed the decree of dismissing the counter claim passed by the trial Court. In view of the above there is no question of execution of the impugned judgment.

9. Hence Civil Application No. 59 of 2020 is disposed of.

**[S. M. MODAK, J.]**