

Sushma

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 104 OF 2013
WITH
CIVIL APPLICATION NO. 8294 OF 2015
WITH
CIVIL APPLICATION NO. 1278 OF 2013

Godabai Kundalik Malge and others ... Appellants

Versus

Dhondiram Govindrao Lomate and others ... Respondents

....

Mr. V.D. Salunke – Advocate for Appellants
Mrs. Rekha Choudhary h/f. Mr. S.S. Choudhary – Advocate for
Respondent Nos. 1 to 4

....
CORAM : GAURI GODSE, J.
DATE : 01st March, 2023

PER COURT :

1. Heard.
2. Admit on the following substantial questions of law :
 - i. Whether the suit filed for partition and separate possession with respect to the properties sold by registered documents in the year 1968 and 1977 is barred by law of limitation without there being any case made out with respect to the cause of action for seeking partition after the date of attaining majority by the plaintiffs ?
 - ii. Whether the findings recorded by the first appellate Court

that the suit was not barred by partial partition is sustainable in view of the evidence on record with respect to the ancestral properties not being included in the description of the suit properties and the suit not being specifically filed for partial partition ?

iii. Whether the suit for partition could have been decreed without there being any challenge to the execution of sale deed by defendant no.1 ?

3. Learned Advocate Mrs. Choudhari holding for learned Advocate for respondent nos. 1 to 4 waives service for respondent nos. 1 to 4.
4. Call for record and proceedings.
5. Printing is dispensed with.
6. The appellants to file private paper book containing judgments of both the courts, first appeal memo, pleadings, notes of evidence and exhibited documents, within a period of one year from today.
7. Hamdust is granted for record and proceedings.

Civil Application No. 1278 of 2013

8. This Civil Application is filed for stay to the execution and operation of the impugned decree. The impugned decree is for

partition. Hence, final decree proceedings to continue. However, by way of interim relief there will be stay to the actual handing over of physical possession during the pendency of the Second Appeal.

9. Civil Application is disposed of.

Civil Application No. 8294 of 2015

10. To be heard along with the Second Appeal.

[GAURI GODSE, J.]