



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

**SECOND APPEAL NO.141 OF 2024
WITH
CIVIL APPLICATION NO.6100 OF 2024**

1. Abdul Wahab Abdul Razzak,
 2. Abdul Qayyum Abdul Razzak,
 3. Abdul Mukheed Abdul Razzak
- **APPELLANTS**
(Original Defendants)

VERSUS

1. Shamshad Begum Syed Abdul Sami
(Died) Through : LRS.
- 1(i) Sayed Aasim Abdul Sami
- 1(ii) Sadiya Anjum Sk. Feroz
- 1(iii) Sayyeda Fatema Johra Md. Awez,
- 1(iv) Sayed Adil Abdul Sami,
- 1(v) Sayed Abdul Sami Sayed Abdul Basid ... **RESPONDENTS**
(Original Plaintiffs)
2. Sugrabi Abdul Razzak (Died) L'rs.
3. Abdul Majid Abdul Razzak,
4. Shaikh Shabir Abdul Razzak,
5. Habibabegum Abdul Rashid,
6. Mumtaz Begum Abdul Qayyum,
7. Mohd. Arshad Abdul Qayyum ... **RESPONDENTS**
(Original Defendants)

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Mr. Sohel E. Siddiqui, Advocate for the Appellants

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 29/07/2024.

ORDER :

1. Heard the learned counsel for the appellants, on admission.
2. The present appellants, who are the original defendant Nos.3 to 5, have preferred this appeal against concurrent findings of both the learned courts below.
3. The original plaintiff – Shamshad Begum had filed suit bearing Regular Civil Suit No.89 of 2013 for partition and separate possession claiming through her father Abdul Razzak. Original defendant No.1 is her mother and other defendants are her brothers and sisters. The learned 3rd Joint Civil Judge (Junior Division), Ambad i.e. the learned trial court conducted the trial and decreed the same by awarding 7/140th share in the suit property to deceased plaintiff – Shamshad Begum. The present appellants feeling aggrieved with the said judgment and decree dated 30/08/2021, challenged the same in Regular Civil Appeal No.213 of 2021 before the learned District Judge-1, Ambad. However, vide

judgment and decree dated 17/02/2024 the District Judge-1, Ambad i.e. the learned first appellate court dismissed the appeal by confirming the earlier judgment and decree of the learned trial court. Hence, second appeal.

4. The learned counsel for the appellants / defendants vehemently submitted that both the learned courts below, have definitely erred in granting share to the original plaintiff by ignoring that partition of the suit property had already taken place. According to him, the limitation was also not there for filing suit by the original plaintiff – Shamshad Begum. Thus, according to him, substantial questions of law in respect of not considering earlier partition of the suit property and suit being barred by limitation, are involved in this matter.

5. On going through the impugned judgments, it appears that there are concurrent findings of both the learned courts below in respect of partition. It is important to note that relationship as well as allotment of shares done by the learned trial court, are not disputed. The appellants / defendants are challenging the impugned judgments only on the basis that the learned trial court did not consider the fact of earlier partition between the parties.

However, on going through both the judgments, it appear that it was the contention of the appellants / defendants that the deceased plaintiff - Shamshad Begum had accepted an amount of Rs.2 lakhs and thereby relinquished her share in the suit property. However, there is no evidence on record adduced by the appellants/ defendants to show that plaintiff- Shamshad Begum had accepted such amount.

6. They also claimed that after that a partition deed was effected and a mutation entry to that effect was recorded in 7/12 extract of the suit property. However, the learned trial court as well as the learned first appellate court have concurrently held that under Sunni Law, shares of legal heirs of the deceased are already fixed and therefore, nobody has any right to execute any partition deed to deprive the shares of other legal representatives. There is nothing on record to show that deceased plaintiff - Shamshad Begum by accepting an amount of Rs.2 lakhs, had relinquished her share in the suit property. Moreover, it has also come on record that she was not party to the partition deed. As such, nothing is there to show that deceased plaintiff - Shamshad Begum had relinquished her share in the suit property. As such, there is no force in the submission of the learned counsel for the appellants /

defendants that the suit property was already partitioned. As such, substantial question of law to that effect is not involved in this matter.

7. Further, though the appellants / defendants claimed that the original plaintiff - Shamshad Begum filed suit for partition after around 30 years and therefore, it was hopelessly time barred. However, the learned trial court has dealt this aspect by observing that the deceased plaintiff - Shamshad Begum had asked share in the suit property in the month of February 2013 and on refusal of appellants / defendants to do so, the suit filed in the same year was well within limitation. The learned first appellate court has also concurred with the said finding and therefore, the second substantial question of law is also not involved in this matter. By considering the aforesaid facts, there is no substance in the present second appeal and it stands dismissed alongwith pending Civil Application No.6100 of 2024, at admission stage.

(SANDIPKUMAR C. MORE, J.)