



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

**SECOND APPEAL NO. 496 OF 2023
WITH
CIVIL APPLICATION NO. 11668 OF 2023**

**BABU RAMKISHAN KOLI
VERSUS
SACHIN HARIDAS SHINDE AND OTHERS**

....

Mr. S. A. Wakure, Advocate for appellant

Mr. S. S. Wakure, Advocate for respondent Nos. 1 to 4

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 23 APRIL 2024

PER COURT :-

1. Heard both the sides at length.
2. The appellant is the original defendant No.2 and the respondent Nos. 1 to 4 are the original plaintiffs. Respondent No.5 is the original defendant No.1 who is the father of plaintiff Nos. 1 to 3 and husband of plaintiff No.4. The respondent Nos. 6 and 7 are the vendees of original defendant No.1.
3. The plaintiffs filed a R.C.S. No.743 of 2006 and prayed for decree of partition claiming that they are having share

in the suit property which is inherited by defendant No.1, the father of plaintiff No.1 and husband of plaintiff No.4.

4. According to the plaintiffs, the defendant No.1 acquired ancestral property i.e. suit property. However, without legal right, the defendant No.1 sold the suit property under registered sale-deed on 19.10.1993. Therefore, the said sale-deed is not binding upon them and they are having share in the suit property.

5. On 29.11,2017, the learned trial Court passed the judgment and decree and dismissed the suit of the plaintiffs. Being dissatisfied of the same, the plaintiffs approached the first appellate Court in R.C.A. No.29 of 2018.

6. On 24.01.2023, the learned first appellate Court passed the impugned judgment and decree and partly allowed the appeal holding that the plaintiff Nos. 1 to 4 are entitled for 4/5th share in suit property of 15 Gunthas from Gut No.3/1 situated at Pawarwadi out of Gat No.3/4.

7. After hearing both the sides and perusal of the judgment and decree passed by both the Courts below, the appeal is ***admitted*** on the following substantial questions of law :-

- (I) Whether the suit for partition of the ancestral property is maintainable after the defendant No.1 executed sale-deed and transferred the suit property in favour of the defendant Nos. 6 and 7 ?
 - (II) Whether the suit of the plaintiffs is maintainable without seeking declaration that the sale-deed executed by defendant No.1 in favour of defendant No.2 on 19.10.1993?
 - (III) Whether the plaintiff Nos.1 to 3 are having right to sue for partition against their father - defendant No.1 during his lifetime?
 - (IV) When the partition is opens in the joint Hindu family in respect of ancestral property?
 - (V) Whether suit of the plaintiffs is well within limitation in absence of declaration to the sale-deed dated 19.10.1993?
 - (VI) Whether the period of limitation of 12 years prescribed under Article 109 of the Limitation Act for partition and separate possession in absence of challenge to the alienation of ancestral property?
8. Printing of paper-book is dispensed with.
9. The appellant to file private paper-book within a period of six months from today.
10. This Court has admitted the appeal.
11. Since the appellant/original defendant No.2 has made out

prima-facie case and there is every possibility about execution of the judgment and decree dated 24.01.2023 passed by the learned first appellate Court in R.C.A. No.29 of 2018. Therefore, the impugned judgment and decree is hereby stayed.

12. Accordingly, civil application No.11668 of 2023 is disposed of.

[Y. G. KHOBRAGADE, J.]

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