



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

**36 SECOND APPEAL NO. 254 OF 2021
WITH
CIVIL APPLICATION NO. 781 OF 2020
IN SA/254/2021**

**GANGADHAR PANDU CHIKNE AND ANOTHER
VERSUS
KAKASAHEB @ BABASAHEB NAMDEO CHIKNE AND ANOTHER**

...
Mr. Navin S. Shah h/f Mr. Natu Sharad V., Advocate for Appellants
Mr. Bolkar Yogesh B., Advocate for Respondent No.1

....

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 05/08/2024.**

P. C. :

1. Heard finally at admission stage.
2. The appellants, who are original defendants, have challenged the judgment and decree passed by the Principal District Judge, Aurangabad in RCA No. 130 of 2015 dated 30/3/2019.
3. On going through the judgment of learned first appellate court i.e. Principal District Judge, Aurangabad in the aforesaid appeal, it appears that the learned first appellate court has granted 1/6th share to the original plaintiffs from the entire suit properties, which fell to the share of Namdeo i.e. predecessor of the plaintiffs.

4. However, the learned counsel for respondents / plaintiffs pointed out that they are entitled for 124 R area out of the suit lands leaving behind 62 R land falling to the share of Namdeo. However, actually they are in possession of total area 133 R out of the suit lands, which is definitely excess by 9 R area. The learned first appellate court has granted 1/6th share from the suit lands being the share of Namdeo. However, when the respondents / plaintiffs are already in possession of excess area of 9 R than their respective shares, the said excess area can be adjusted in to the area which they are entitled now being the share of Namdeo. As such, on calculation the respondents / plaintiffs are now entitled for 53 R land from the suit land instead of 1/6th i.e. 62 R land.

5. The learned counsel for the respondents/ plaintiffs consented for such adjustment in the share granted by the learned first appellate court under the impugned judgment and decree. In view of the same, the present second appeal is allowed in parts only to the extent of area of the share granted to the respondents / plaintiffs. The clause-5 of the operative part of the judgment of learned first appellate court is modified and it is declared that the respondents / plaintiffs are entitled to the area of 53 R land out of

the suit lands from the share of Namdeo. The rest of the order shall remain as it is.

6. The trial court is directed to modify the decree accordingly. As such, the second appeal alongwith the pending civil applications, if any, stand disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-