

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6911 OF 2025

IN

APPEAL FROM ORDER NO. 57 OF 2017

DHONDABAI SHIVAJI WAYSE DIED
THROUGH BALAJI SHIVAJI WAYSE
AND OTHERS

... APPLICANTS

VERSUS

VIMALBAI GANGARAM SHINGADE
AND OTHERS

... RESPONDENTS

....

Advocate for the applicants : Mr. D.H. Jadhavar

Advocate for Applicants in Appeal From Order

No.57 of 2017 : Mr. Amol T. Jagtap

...

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 15th JULY, 2025

ORDER:-

1. Heard rival submissions.
2. The present applicants, who are the legal representatives of original defendant No.3 in Regular Civil Suit No. 287 of 1991, are seeking modification of the order dated 06.10.2017 in Regular Civil Appeal No. 5 of 2012. The learned Advocate for the applicants submits that, this Court while passing the aforesaid order, inadvertently directed the learned First Appellate Court to decide the Regular Civil Appeal No. 5 of 2012 in respect of dispute between the appellants/ plaintiffs and respondent Nos. 1 and 2, who are the original defendant Nos. 1 and 2 in the aforesaid suit independently on

the basis of evidence on record. According to him, the aforesaid dispute is in fact between original plaintiffs and original defendant Nos. 1 to 3. However, in the order dated 06.10.2017, this Court has observed that “ there was compromise between original defendant No.3 and plaintiffs in the aforesaid suit and therefore, it has been observed that, now the dispute between the plaintiffs and defendant Nos. 1 and 2 has only remained.”

3. It is brought to the notice of this Court by the learned counsel for the original defendant Nos. 1 and 2 that original defendant No.3 Dhondabai has in fact instituted a separate civil suit for partition of the remaining suit land i.e. Gut No. 105 to the extent of area admeasuring 7 Hectar 2 R. However, the said dispute is interse dispute between defendant Nos. 1 and 2 one one hand, and defendant No.3 on the other hand. The order dated 06.10.2017 is only in respect of dispute between original plaintiffs and defendants about the suit land. On the basis of compromise between the original defendant No.3 and the plaintiffs, now there cannot be any dispute between the plaintiffs and defendant No.3. So far as the dispute between defendant No.3 and defendant Nos. 1 and 2 is concerned a separate suit is already filed and it is pending. Therefore, the direction for deciding the dispute between the plaintiffs and defendant Nos. 1 and 2 in respect of the suit land appears proper. Therefore, this Court is

not inclined to modify the said order dated 06.10.2017. Accordingly, the application stands dismissed. However, the learned First Appellate Court shall not prohibit the present applicants, who are the legal representatives of defendant No.3 from making their submissions, provided that it should be related only to the dispute if any, between plaintiffs and defendant No.3 in the original suit i.e. Regular Civil Suit No. 287 of 1991.

4. As such, the application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

Y.S. Kulkarni