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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.502 OF 2012

Dattu Rama Kamble

APPELLANT

VERSUS

Rama Tanha Kamble & others

RESPONDENTS

.....
Mrs. P. V. Langhe, Advocate for the appellantMr. P. S. Agrawal, Advocate for respondents No.1 to 4
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th FEBRUARY, 2015

ORDER :

1. Heard learned advocate for the appellant extensively. The appellant had filed Regular Civil Suit No. 136 of 2007 seeking separation of his one fifth share in ancestral properties and a further declaration that land admeasuring 1 hectare 1 Are from Gut No.28, as described in the plaint, to be his self acquired property.

2. It is the contention of the appellant that he had been working as a plumber in Mumbai and from the earning derived from said vocation, he had purchased land from his maternal uncle and since he was busy in plumbing work at Mumbai while

sale deed had been executed, it was at his direction the land was purchased in the name of his father - defendant No.1.

3. Trial court had decreed the suit to the extent of share demanded by the appellant in ancestral properties including property sought to be declared as self acquired property. Aggrieved to the extent of non declaration of 1 hectare 1 Are from Gut No. 28, as self acquired property, the appellant moved to the appellate court. The Appellate court dismissed the appeal.

4. On appreciation of evidence, the trial court as well as the appellant court have considered that in effect the contention of the appellant is that the land to the extent of 1 hectare 1 Are from Gut No. 28 has been purchased by him *Benami* in the name of his father and as such, the burden has to be discharged by the appellant. With reference to a citation *AIR 1974 SC 171 "Jaydayal Poddar V. Bibi Hazra"* the appellate court has considered that it was incumbent for the appellant to have disclosed source from which purchase money came, nature of possession of the property after purchase, the motive, if any giving transaction a Benami colour, possession and other relationship if any of the parties, custody of deeds of title and conduct of the parties concerned.

5. The appellant, it appears, had not been in a position to

state as to what was his earning, nor had he maintained any documents/accounts in respect of the same. The appellant had not been specific about the circumstances due to which *Benami* transaction had been entered into or for that matter had not been in possession of the title deeds. His testimony in respect of self acquisition of the concerned property had been sought corroboration from the vendor and his wife. It appears that in their testimony, said witnesses had dithered and could not give necessary particulars viz., as to when the transaction had taken place, when the amounts were tendered and as to what was the necessity to enter into such a transaction.

6. Appreciation of the evidence by the courts appears to be plausible and possible and can hardly be termed as perverse. As such, it is not a fit case for this court to interfere with said findings of facts. The facts and circumstances and the decisions by the courts below do not give any rise to a question of law which can be said to be substantial in nature. Second appeal, as such, stands dismissed.

[SUNIL P. DESHMUKH, J.]