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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.730 OF 2015
WITH
CIVIL APPLICATION NO. 16190 OF 2015

Vandana Gulabrao Gabhud & Others

APPELLANTS

VERSUS

Mandabai Shankarrao Undre & Others

RESPONDENTS

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Mr. Abhijit S. More, Advocate for appellants

Mr. D. K. Thote, Advocate for respondents No.1 to 4

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th DECEMBER, 2015

ORDER :

1. Heard learned advocates for the parties.
2. After hearing learned advocate for the appellants, who had argued the matter extensively, referring to various aspects involved in the matter, the sum and substance boils down to contention of appellants that property bearing block No.370, situated at village Vihamandwa, Taluka – Paithan, District- Aurangabad which stood in the name of appellant No.5 is not liable for partition.
3. It emerges that said property had been initially in the name of Kalyan, brother of the plaintiff and after his death, it

was recorded in the name of Gulabrao - husband of appellant No.5, who happens to be wife of Gulabrao after demise of his first wife Vatsalabai. It was during lifetime of Gulabrao, property came to be recorded in the name of appellant No.5.

4. Although it is being contended on behalf of the appellants that it is the independent and separate property of appellant No.5, yet it descended to her as referred to above. Apart from that it has come on record that though the property was recorded in the name of Kalyan, its real owner was grandfather i.e. father of Gulabrao.

5. Having regard to the above as well as facts and circumstances and the evidence on record, the decisions, concurrently given by two courts below, would seldom be faulted with.

6. As far as other properties are concerned, the appellants do not seriously dispute about the same being ancestral properties liable for partition.

7. Learned advocate for the appellants has also contended that the suit suffers from non-joinder of necessary parties in absence of two known sisters being alive, apart from Indubai,

who is arrayed as defendant. This situation, as well, would hardly enure any benefit to the appellants, for, their absence in the suit is likely to affect all the parties, including the appellants. Apart from that, *lis* is not to be defeated by reason of misjoinder or non-joinder of parties and further in the present case, persons concerned have not been shown as to how they may constitute necessary parties.

8. In the scenario, it does not appear that the second appeal gives rise to any substantial question of law. As such, second appeal stands dismissed.

9. In view of disposal of second appeal, civil application does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]