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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.678 OF 2013

Smt.Shaulilaja Mahadeo Wadke
(Since deceased through her LRs)

a) Mahadeo Baburao Vadke
(Since deceased)

b) Madhuri Pradip Langekar & Ors.

.. Appellants

Vs.

Smt.Sumatibai V. Parange
(Since deceased through her Lrs)

1a) Manohar Vishnu Parange & Ors.

.. Respondents

....
Mr.S.N. Chandrachud, Advocate for the Appellants.
Mr.Sanjay Kshirsagar, Advocate for the Respondents.
....

CORAM : R.K. DESHPANDE , J.

DATED : JUNE, 17 2015.

P.C. :

The executing Court passed an order below Exhibit-12 in F.D.No.4258 of 2000 on 21st May, 2009. The operative portion of the order is reproduced below:

1. *The market value of the 9/10th share in question is determined at Rs.20,23,830/- to be paid by the defendant no.1 to the plaintiffs by accepting the valuation of the entire property @ Rs.22,48,700/-.*

2. *The defendant no.1 is entitled for adjustment of Rs.6,93,550/- the amount which she has deposited in the court from time to time. Therefore, the defendant no.1 is directed to deposit the balance amount of Rs.13,30,280/- in the Court within two months from today.*

3. *If the defendant no.1 deposits the amount as directed above in the Court towards the price of share in question, the plaintiffs shall sell their share to defendant no.1 within one month thereafter.*

4. *The parties to bear their own costs."*

2 Appeal preferred against it has been dismissed by the Lower Appellate Court on 5th March, 2000 hence this Second Appeal preferred by the decree holder.

3 There is no dispute about 9/10th share to which the appellant-original plaintiff was entitled. The question as to the right of the defendant no.1 to purchase this share in terms of Section 4 of the Indian Partnership Act, 1932 was decided by the Executing Court on 20th December, 2005 by an order passed below Exhibit-12. This order has attained the finality resulting into creation of right in favour of the defendant no.1 to purchase the

share allotted to the appellate-plaintiff. In one of the litigation arising out of the execution proceedings in Writ Petition No.825 of 2006 decided by this Court on 24th July, 2006. following order was passed:

“1. Heard Mr.Chandrachood the learned counsel for the petitioners-decree holders. In fact, in this petition the order passed by the learned 8th Joint Civil Judge, Senior Division, Pune on 20/12/2005 has not been challenged and the fact the petitioners are aggrieved by the inaction of the defendant. If that be so, it would be appropriate for the decree holders to approach the Court below and request for a time bound schedule to submit the market value and to purchase the suit property i.e. 9/10th share of the decree holders. If such an application is filed within one week from today, the Court below is directed to dispose off the same within two weeks thereafter.

2 The petition disposed off accordingly.”

4 In view of the aforesaid order passed by this Court the only question which was required to be determined by the executing Court was to fix the market value of 9/10th share allotted to the plaintiff by impugned order passed by the Executing Court on 21st April, 2005. The price has been determined as 22,48,700/- which is said to have been deposited in the Executing Court. The determination of market value is essentially a question of fact and

no substantial question of law arises for consideration. Second Appeal is dismissed.

5 The learned counsel appearing for the appellant at this stage seeks suspension of the order passed by this Court for a further period of eight weeks from today so as to enable the appellant to avail further appropriate remedy. The order passed by this Court shall be suspended for a period of six weeks from today.

(R.K. DESHPANDE, J.)