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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 103 OF 2014

WITH

CIVIL APPLICATION NO. 1612 OF 2012

IN

SECOND APPEAL NO. 103 OF 2014

Suresh Murlidhar Patil (Kakad)

... Appellant

Versus

Jyotismati Chandrtakant Patil and Ors.

... Respondents

Mr. Tushar Sonawane for the appellant.

Mr. Ashok Toraskar for respondents.

CORAM : Smt. R.P.SondurBaldota, J.

DATED : February 02, 2015

P.C.

1. The second appeal is directed against the concurrent findings of fact as well as law rendered by the courts below in the suit for partition of the joint property and for separate possession. One of the defences taken by the appellant to the partition is that the suit is barred for non-inclusion of the entire ancestral property.

2. The courts below answered the issue of maintainability of the suit on the ground of non-inclusion of the entire ancestral property in the affirmative with an observation that even if such property remains to be

included in the suit between the parties, the only inference that can be drawn is that the plaintiff in the suit is not interested in getting such property partitioned. Besides that the provisions of Order 2 rule 2 of the Code of Civil procedure, 1908 would also be applicable to the said suit wherein the plaintiff would be deemed to have given up his rights to such property. There is no infirmity in the view taken by the courts below and therefore, no substantial question of law arising for the consideration of the court. Hence, the appeal is dismissed.

3. In view of the dismissal of the appeal, Civil Application does not survive and the same is disposed of accordingly.

(Smt R.P. SondurBaldota,J.)