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SA-36-2015
(sr. no.902/suppl.board)
Tuesday,20/1/2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 36 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 78 OF 2015
IN
SECOND APPEAL NO. 36 OF 2014

1. Shri. Tulshiram Dharma Gangurde and Ors.Appellants
(Orig. Plaintiffs)
: V/S :
1. Shri. Bhima @ Uttam Kalu Gangurde and Ors.Respondents
(Orig. Defendants)

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Mr. Rahul Motkari, Advocate for the appellants.

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Coram :- Smt. R.P. SondurBaldota, J.

20th January, 2015.

P.C. :-

1). The Second Appeal is directed against the concurrent findings of the Courts below as regards the nature of the suit properties. The trial Court held that, all the suit properties i.e. the agricultural land at Gat No.4, 7/A, 7/B, 7/C, 9, 10 and 79 are ancestral properties and out of the five houses only one house i.e. House no.336 is an ancestral property. It granted equal share to all the siblings. The appellants had claimed that, their father, Dharma

had purchased the properties at Gat no.7A, 7B, 9 and 10 out of his independent income and as such, they were his self-acquired properties, not amenable to partition. Admittedly, at the time of death of Kalu, the father of the parties, Dharma, the predecessor of the appellants was 16 years old and the respondents were of the age between 2 to 10 years old. As a consequence, it is Dharma who had taken up cultivation of the ancestral properties and earned therefrom. According to the appellants, in addition, Dharma had worked as a Peon in Gram Panchayat and also in the Society. The properties at Gat no.4, 7B, 9 and 10 were purchased at different points of time. There is no evidence before the Court that, Dharma had sufficient independent income at the relevant time i.e. at the time of purchase of different properties. In the absence of evidence, the Courts below have held all the properties to be ancestral properties. Once there was admittedly nucleus available out of the ancestral properties, if the appellants desired to claim their part of the suit properties as independent properties, it was necessary for them to establish the availability of independent income at the time of purchase of each property. In the absence of such evidence, there can be no infirmity in the decisions of the Courts below. Also there is no substantial question of law arising for consideration of the Court. Hence, the Second Appeal is dismissed.

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2). With the dismissal of the Second Appeal, Civil Application No. 78 of 2015 does not survive. The same is accordingly disposed off as having become infructuous.

(SMT. R.P. SONDURBALDOTA, J)