

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 736 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 1718 OF 2014****Smt.Heenakousar Munaf Sahebware & Ors. Appellants****VERSUS****Naseema Parwez Patel (Sahebware) & Anr. Respondents**

Mr.Gajanan Savagave for the Appellants.

Mr.Harsh Behany, i/b. Maniar Srivastava Associates for the Respondents.

CORAM : R.D. DHANUKA, J.**DATED : 25th FEBRUARY, 2016****P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendant nos. 2 to 4) have impugned the order dated 2nd May, 2014 passed by the learned District Judge -1, Jaysingpur allowing the appeal filed by the original plaintiff and declaring that the original plaintiff is having 7/24 share in the Gat Nos. 1163, 117 situated at Village Alas, Taluka Shirol and Gat No. 303 situated at Village Bubnal, Taluka Shirol. The learned trial judge had declared that the original plaintiff would be entitled to 7/24 share only in the Gat No.117 and not in Gat Nos. 1163 and 303. Insofar as present respondents are concerned, the appellants did not challenge the decree passed by the learned trial judge before the lower appellate court.

2. A perusal of the record indicates that insofar appellants are concerned, the appellants have claimed right in the property bearing Gat Nos. 1163 and 303 on the basis that the original owner Chooteso had forwarded one application to the Talathi

for recording name of his son Munaf in respect of properties bearing Gat Nos. 1163 and 303. The lower appellate court has considered this issue at length and has held that merely on the basis of such application sent by the original owner Chhoteso, the appellants herein could not claim the exclusive right, title and interest in the said properties bearing Gat Nos. 1163 and 303.

3. The lower appellate court in my view has rightly declared that the original plaintiff was having 7/24 share in all the three properties and not only in the property bearing Gat No.117. In my view there is no infirmity in the order passed by the lower appellate court. There is no substantial question of law arises in this second appeal. Appeal is accordingly rejected.

4. At this stage, learned counsel for the appellants states that since the order and judgment passed by the lower appellate court is confirmed by this court, the appellants are ready and willing to either buy the undivided share of the respondents in Gat No.1163 or is willing to sale their undivided share in the said property to the respondents. It is for the respondents to decide whether to accept this offer of the appellants or not.

5. In view of rejection of the appeal from order, civil application does not survive and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]