

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 226 OF 2013

Popat Pandurang Hargude

..... Appellant

VERSUS

**Pandurang Shripati Hargude
(Deceased) by his legal heirs & Ors.**

..... Respondents

Mr.S.M.Railkar for the Appellant.

Mr.Mandar Limaye for the Respondent nos. 1A to 1C, 2 and 3.

Mr.Popat Pandurang Hargude, Appellant present in person.

CORAM : R.D. DHANUKA, J.

DATE : 30th NOVEMBER, 2016

P.C.

After arguing the matter for sometime, learned counsel for the appellant on instruction from his client who is present in court seeks liberty to withdraw second appeal with liberty to file a fresh suit. It is not in dispute that the suit filed by the appellant as well as the appeal filed arising out of the judgment and decree passed by the learned trial judge is dismissed on the ground of non-joinder of necessary party. The appellant is permitted to withdraw the second appeal with liberty to file a fresh suit.

2. It is made clear that since the impugned judgment and decree passed by the two courts below are based on the non-joinder of the necessary party, if any fresh suit is filed for partition, the learned trial judge in the said suit shall not be influenced by any observations made by the two courts below in the impugned judgment and decree and shall decide the said suit on merits in accordance with law. If the issue of limitation is raised by the original defendants in the fresh suit, the said issue is kept open and shall be decided on its own merits.

(R.D.DHANUKA, J.)