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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 177 OF 1996 (AURANGABAD)
SECOND APPEAL NO. 588 OF 1991 (BOMBAY)**

Popat Yadav Patil

..APPELLANT

VERSUS

Vanji Manga Patil,
Since deceased through his
Heirs and Legal Representatives

1. Arostralbai Ramesh Patil,
Age: 40 years, Occ: Household,
R/o. Near Khopat, Thane,
2. Chatur Vanji Wagh,
Age: 45 years, Occ: Agri.,
R/o. At and Post Mohadi,
Varthwadi, Dhule.
3. Gokul Vanji Wagh,
Since deceased through his
Heirs and Legal Representatives.
- 3A. Pamabai Gokul Wagh,
Age: 30 years, Occ: Household,
R/o. At and Post Dattane,
Tq. Sindkheda, Dist. Dhule.
4. Pandharinath Vanji Wagh,
Age: 42 years, Occ: Agri.,
R/o. House No.20, Phule Colony,
Dhule.
5. Chitrabai Lotan Kakudte,
Age: 46 years, Occ: Household,
At and Post Kapadne,
Tq. and District Dhule.
6. Rangrao Vanji Wagh,

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Age: 50 years, Occ: Agri.,
R/o. Nilgiri, Surat (Gujarath)

7. Pushbai Bharat Patil,
Age: 48 years, Occ: Household,
At and Post Manrul,
Tq. Amalner, Dist. Jalgaon.

8. Bhausahab Vanji Wagh,
Age: 52 years, Occ: Agri.,
At and Post Avdhan,
Near Ration Shop, Dhule.

9. Raosaheb Vanji Wagh,
Age: 55 years, Occ: Agri.,
House No.20, Phule Colony,
Dhule.

..RESPONDENTS

Mr L.V. Sangit, Advocate h/f Mr. V.J. Dixit, Senior
Advocate for appellant
Mr N.L. Chaudhari, Advocate respondent Nos. 1,2, 4
and 6 to 9

CORAM : N.W. SAMBRE, J.

DATE : 15th JUNE, 2017

ORAL ORDER :

The suit of the present respondent-
plaintiff being Regular Civil Suit No. 129 of 1982
for recovery of possession of the suit land came to
be decreed subject to present respondent-plaintiff
to give Rs.10,000/- to the appellant-defendant vide
judgment and decree dated 25th October, 1985 by

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Civil Judge, Junior Division, Sindkheda.

2. The defendant in the said suit i.e. appellant herein was directed to hand over possession of the suit field to the plaintiff and plaintiff was directed to pay amount of Rs.10,000/- to the defendant.

3. Original plaintiff, feeling aggrieved by the said judgment of directing the payment of Rs.10,000/- preferred appeal being Regular Civil Appeal No. 35 of 1986. The appellate Court vide judgment and order dated 6th September, 1991 allowed the appeal and set aside the order passed by the trial Court of directing the plaintiff to give Rs.10,000/- to the defendant. Possession of the suit property was directed to be handed over to the plaintiff by the defendant in the suit.

4. The original defendant-appellant has questioned the said judgment in the present second appeal.

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5. At this stage, learned Counsel for the respondent-original plaintiff has deposited amount of Rs.10,000/- in this Court pursuant to the directions issued by the trial Court and submits that he shall comply with the said term incorporated by the trial Court in the judgment and decree of possession.

6. In response to the above, learned Counsel for the appellant-original defendant submits that amount of Rs.10,000/- as is deposited is subject to the outcome of present second appeal and second appeal be heard on merit.

7. According to him, judgment and order directing delivery of possession subject to payment of Rs.10,000/- is not sustainable in the backdrop of amount being not paid and deposited within stipulated period though consent was extended.

8. Upon appreciation of judgment and order of

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both the Courts below, it is required to be noted that position as on the date of filing of the suit is required to be appreciated.

9. The land Gat No. 94 was owned by plaintiff and possess by defendant. It was tenancy land and since original plaintiff was in need of money, the defendant being money lender advanced Rs.10,000/- to the plaintiff and in lieu of possession of the suit property, mortgage deed was executed.

10. The plaintiff, as such, sought possession of the property, to which, the defendant responded by admitting payment of Rs.10,000/- to the plaintiff.

11. Perusal of written statement filed by the defendant reflects that he has consented for handing over possession of the suit property provided he gets Rs.10,000/-.

12. As the amount of Rs.10,000/- is already

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deposited, to which, in my opinion, present appellant-defendant is entitled for, in view of observations made by learned trial Court in the judgment, particularly paragraph-15, which reads thus :

"15. Mr. V.P. Bhamare, the learned counsel for the Defence drew my attention to Section 61 of the Maharashtra Land Revenue Code that this transaction is not permitted by the Collector and therefore is illegal one. I think both the parties are agreeing to this point. Mr. V.P. Bhamare, further candidly concerned that Defendant is ready to give possession of the Plaintiff, if Plaintiff gives Rs.10,000/-. This frankness on the side of Defendant is acceptable."

13. In view of above, the second appeal, in my opinion, does not call for any interference. The appeal stands dismissed. However, the amount of Rs.10,000/- (Rs. Ten thousand only) deposited by respondent-plaintiff, to which the appellant-defendant will be entitled for and respondent-

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plaintiff will be in a position to execute decree
for possession.

(N.W. SAMBRE, J.)

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