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

**CIVIL APPLICATION NO.2124 OF 2012
IN/WITH
SECOND APPEAL (ST.) NO.1284 OF 2012
WITH
CIVIL APPLICATION NO.2125 OF 2012**

Nivarti s/o Bhujanga More,
Age 34 years, Occp. Agril.,
R/o Panshevadi, Tq. Kandhar,
Dist. Nanded

..APPLICANT
(Orig. Plaintiff)

VERSUS

1. Vimal w/o Hanmantrao Shinde,
Age major, Occp. Household,
R/o Dahikalamba, Tq. Kandhar,
Dist. Nanded

2. Madhav s/o Digambar More,
Age : 50 years, Occp. Service,
R/o Panshevadi, Tq. Kandhar,
Dist. Nanded

..RESPONDENTS
(Orig. Defendants)

Ms Kavita R. Jamdhade, Advocate holding for Ms Maya R. Jamdhade ,
Advocate for applicant;
Mr V.B. Dhage, Advocate for respondents

**CORAM : N.W. SAMBRE, J.
DATE : 5th July, 2017**

ORAL ORDER

For the reasons disclosed in Civil Application No.2124 of 2012,
delay stands condoned and application stands disposed of accordingly.

2. The present Second Appeal is by plaintiff in Regular Civil Suit No.24
of 2003, which was for injunction, ownership and possession based on
title. It is claimed by the plaintiff that he got title to the suit property by virtue

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of sale deed dated 13th January, 1988 executed in his favour by one Babarao Sambhaji More.

3. The Trial Court dismissed the suit of the appellant-plaintiff on the ground that he has failed to prove his title to the suit property, which is further confirmed in an appeal being Regular Civil Appeal No.25 of 2009 by judgment and decree dated 2nd August, 2011, passed by District Judge, Kandhar, District Nanded. Thus, the present Second Appeal.

4. Learned Counsel appearing on behalf of the appellant while questioning the concurrent findings would urge that the sale deed dated 13th January, 1988 in favour of the appellant, which is further considered for the purpose of carrying out mutation entry in his name in the Grampanchayat records is not considered and as such on the said issue a substantial question of law is required to be formulated, when the evidence is not analyzed by the Courts below in the aforesaid background. As such, judgments and decrees rendered by the Courts below are not sustainable.

5. With the assistance, I have perused the findings recorded by the Courts below. The title of the present appellant by virtue of sale deed is already narrated herein above. The suit property is claimed to be bearing Grampanchayat House No.486 (old No.163) which is adjoining Gaothan area. It is then claimed that the said property was subsequently given survey No.163 and now Gat No.862. It is claimed by the present appellant that his predecessor-in-title Babarao was the absolute owner of the said

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property and as such, by virtue of sale deed dated 13th January, 1988 the said title vests in the present appellant.

6. While countering the aforesaid claim, it is brought on record by the defendants through cogent evidence that the property of which the dispute is raised, is in fact, owned by one Tanyabai and the respondents-defendants are successor in title of said Tanyabai. The defendants in support of their contentions have brought on record through the evidence of defendant No.2 sale deed dated 24th April, 1991, at Exh.81, whereby they have tried to prove their title to the property. One Kishan was examined, who has purchased survey No.163/1 ad measuring 32 R from said Tanyabai at Exh.78. The certified copy of the sale deed of Kishan is produced at Exh.86 which is dated 1st December, 1979. The other purchaser of the land from said survey No.163/1, namely, Shivaji, the author of the document, consolidation extract of survey No.163 and the mutation entry are brought on record by the defendants.

7. It is then to be noted that survey No.163/1 of Mouje Panshevadi was standing in the name of one Kishan More and in consolidation scheme under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, Block No. 862, ad measuring 32 R, is mutated in his name as owner. The said property was thereafter mutated in the name of Shivaji and Uttam for an area of 2 R and thereafter, the said property is mutated in the name of the defendants as they have purchased 1 R land out of the said survey No.163. So far as the Grampanchayat

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record is concerned, House No.486 is in the name of plaintiff, which is ad measuring 66 x 33 ft. The registered sale deed executed by Babarao (Exh.68) in favour of plaintiff was considered by the Courts below and in the background of the title of Tanyabai to the suit property, upon verification of the title deed of each of the parties, recorded finding that the predecessor-in-title of the appellant has no better title to the suit property.

8. In the background of the evidence; oral and documentary since it is brought on record that the predecessor-in-title of the present appellant has no better title than the defendant, in my opinion, it has been rightly held by both the Courts below that the present appellant cannot have better title to the suit property than the defendant.

9. In view of the concurrent findings of fact recorded by the Courts below on the issue of ownership, I do not see any perversity in the appreciation of evidence. The second appeal does not involve substantial question of law. It, therefore, stands dismissed.

10. In view of dismissal of appeal, Civil Application No. 2125 of 2012 does not survive and stands disposed of accordingly.

(N.W. SAMBRE, J.)

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