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

**SECOND APPEAL NO. 490 OF 1999
WITH
CIVIL APPLICATION NO. 6775 OF 2005
IN
SECOND APPEAL NO. 490 OF 1999**

Ramvilas Nandram Jaju
age 45 years occupation business
R/o Ambi Taluka Rahuri Dist. Ahmed Nagar
(Died) through legal representatives:

- 1A) Smt. Sharda Ramvilas Jaju,
age 63 years occupation household
- 1B) Jayprakash S/o Ramvilas Jaju,
age 32 years occupation business
- 1C) Lalchanda S/o Ramvilas Jaju,
age 28 years occupation business

All R/o Ambi Taluka Rahuri Dist. Ahmednagar.

... APPELLANTS
(Original plaintiff)

VERSUS

- 1) Husainbhai S/o Fatambhai Inamdar
age 57 years occupation service
R/o Ambi Taluka Rahuri Dist. Ahemad Nagar
- 2) Raosaheb W/o Husainbhai Inamdar,
age 45 years occupation Nil R/o as above
- 3) Jafar S/o Husainbhai Inamdar,
age 30 years occupation business
R/o as above.

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- 4) Bismillabee Jafar Inamdar,
age 22 years occupation Nil
R/o as above

...RESPONDENTS
(Original Defendants No.1 to 4)

Mr Sanket Kukarni, Advocate, holding for Mr S.D. Kulkarni,
Advocate for appellants
Mr Kadu Shivraj B. for respondents No. 3 & 4

CORAM : N.W. SAMBRE, J.

DATE : 3rd July, 2017

ORAL ORDER

1. This appeal is by original plaintiff, whose suit for possession based on the alleged title deed dated September 13, 1988, came to be decreed by Judgment and decree dated January 21, 1995, delivered by the Civil Judge (Junior Division), Rahuri, however, upset in an appeal by the learned II Extra Joint District Judge, Ahemad Nagar, vide judgment and decree dated March 3rd, 1998.

2. The learned Counsel for the appellants submits that the suit was resisted by the present respondents/original defendants by raising a plea of adverse possession, and as such, admitted title of present appellant. According to him, in the said backdrop, since the title is based on the document dated September 13, 1988, the suit, which was instituted immediately after issuance of notice dated October 17, 1988,

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is based on the cause of action narrated therein,. According to him, the question of law that is required to be appreciated by this Court is, once the suit notice dated October 17, 1988 disclosed cause of action, whether Appellate Court has committed an error in upsetting the judgment of the lower Court on the ground of non-disclosure of cause of action.

3. With the assistance of respective learned Counsel, I have perused both the judgments i.e. one passed by the Trial Court and another passed in an appeal.

4. From the record, it discloses that the appellant claims his title based on sale deed dated September 13, 1988, executed in his favour by one Balambhai. Said Balambhai was examined by the appellant in his favour to prove his title and the original title deed was not produced. A photo copy of the title deed is appreciated by the Court below and based on the evidence of appellant and said Balambhai, recorded finding of title in favour of the appellant.

5. It is required to be noted that once a original document conferring title on the present appellant was not produced and the appellant was relying upon photo copy of the sale deed, the least that

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was expected from the appellant is to seek permission of the Trial Court to lead secondary evidence in support of alleged title deed in the background of section 63 of the Evidence Act.

6. What is noticed from the record and proceedings of the Trial Court is that the appellant has neither taken out such proceeding before the Trial Court nor before the First Appellate Court, so as to establish his title, which according to him, could be borne out from the evidence of plaintiff, his predecessor in title and photo copy of sale deed dated September 13, 1988.

7. On this count alone, in my opinion, judgments of both the Courts below are not sustainable and the present appeal needs to be remanded back to the Trial Court for reconsideration, recording appropriate findings of title of present appellant.

8. As such, the appeal, in my opinion, is partly allowed.

(I) Judgment delivered in Regular Civil Appeal No. 124/1995 passed by the II Extra Joint District Judge, Ahemad Nagar, on March 3, 1998, and the judgment passed in Regular Civil Suit No. 495/1988 by the Joint Civil Judge (J.D.), Rahuri, are hereby quashed and set aside.

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- (II) Regular Civil Suit No. 495/1988 stands restored upon the file of the learned Trial Court, before whom both the parties shall appear on July 24, 2017.
- (III) The Trial Court shall grant opportunity to the present appellant/plaintiff to prove his title, if required to adduce evidence, both oral and documentary, and shall give equal opportunity to the defendants to meet the case of the plaintiff.
- (IV) The Trial Court is expected to make endeavour to decide the suit within a period of one year from today, as the parties are litigating since 1988.
- (V) With above observations, appeal stands disposed of.

9. In view of disposal of the Appeal, Civil Application, if any, stands disposed of.

(N.W. SAMBRE, J.)

pjm