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

**SECOND APPEAL NO. 581 OF 2016
WITH
CIVIL APPLICATION NO. 11704 OF 2016
IN
SECOND APPEAL NO.581 OF 2016**

Ankush s/o Devsing Rathod,
Age: 35 years, Occ: Agri. & labour,
R/o. Warola, Tq.Majalgaon,
Dist. Beed. ..APPELLANT

VERSUS

Bhagwan s/o Tukaram Tipare,
Age: 68 years, Occ: Agri.,
R/o. Warola, Tq. Majalgaon,
at present back side of Bajaj
Hospital, House of Jangam,
Shivajinagar, Majalgaon,
Tq. Majalgaon, Dist. Beed. ..RESPONDENT

Mr R.T. Nagargoje, Advocate for appellant;
Mr J.M. Murkute, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th JUNE, 2017

ORAL ORDER :

In Regular Civil Suit No. 155 of 2000 for
declaration and injunction based on the title of
respondent-plaintiff, a decree came to be passed
against present appellant on 20th June, 2005

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restraining the present appellant-defendant perpetually from causing obstruction to the peaceful possession of the plaintiff over the suit property. The suit came to be decreed after issues were framed and plaintiff-respondent has adduced his evidence. He has claimed that he has purchased the property by way of sale deed dated 31st July, 1997 and there was mutation being Mutation Entry No.1331 and also revenue entry in 7/12 extract.

2. Since the contention raised in the plaint and evidence adduced was not countered by present appellant-original defendant, the trial Court decreed the suit.

3. An appeal being Regular Civil Appeal No.38 of 2012 under Section 96 of the Code of Civil Procedure at the behest of the present appellant-original defendant came to be dismissed on 30th November, 2015 after recording the findings that the claim in the suit was not resisted by present appellant. The appellate Court considered the

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evidence of the plaintiff as was brought on affidavit and proceeded to dismiss the appeal.

4. In the present second appeal by original defendant against concurrent findings, a question of law is sought to be framed on the issue of non granting fair opportunity of hearing or to defend the suit. So as to substantiate the contention, factual ground is raised that Counsel who was appointed expired in 2005 and as such, suit was not properly defended.

5. So far as the above referred contentions are concerned, it is to be noted that the suit was initiated on 17th July, 2000 and decree was passed on 20th June, 2005. Even if presuming that Counsel appointed expired in 2005, however, prior to same, neither any written statement is filed nor any steps were taken in the suit so as to resist the claim. Apart from above, vague ground, to that effect is raised here without substantiating the same through any documentary evidence.

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6. The second appeal is devoid of any substantial question of law. The appeal fails, stand dismissed.

7. In the light of dismissal of second appeal, civil application stands dismissed.

(N.W. SAMBRE, J.)

Tupe