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

**SECOND APPEAL NO. 234 OF 2001 (AURANGABAD)
SECOND APPEAL NO. 392 OF 1984 (BOMBAY)
WITH
CIVIL APPLICATION NO.9364 OF 2004
IN
SECOND APPEAL NO. 234 OF 2001**

Hari Bhanudas Patil,
age: 79, Agriculturist,
residing at Shirud Dg.
Tal. Shahada, Dist.

..APPELLANT

VERSUS

1. Magan Hari Patil,
age 49,
2. Chhabibai w/o Magan Patil,
Died through L.Rs.
- 2-a. Magan Hari Patil,
Age Major, Occ: Agri.(died)
- 2-b. Ganesh Magan Patil,
Age MAJOR, Occ: Agri.,

Both R/o. at
Shirud Tq. Shahada,
District Dhule.

..RESPONDENTS

WITH

**SECOND APPEAL NO. 219 OF 2001 (AURANGABAD)
SECOND APPEAL NO. 504 OF 1984 (BOMBAY)**

1. Hari Bhanudas Patil,
age: 79
(Appeal dismissed vide
Court's order dtd. 22/6/10)

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2. Uttam Hari Patil,
age 39,

Both Agriculturists, residing
at Shirud Dg. Taluka Shahada,
District Dhule.

..APPELLANTS

VERSUS

Magan Hari Patil, age 49,
Labourer, residing at
Shirud Dg. Tal. Shahada,
Dist. Dhule.

..RESPONDENT

Mr A.H. Kasliwal, Advocate for appellant
Mr S.P. Shah, Advocate respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th JUNE, 2017

ORAL ORDER :

Magan Hari Patil filed Regular Civil Suit No. 7 of 1978 against his father Hari and brother Uttam for permanent injunction, whereas Regular Civil Suit No. 102 of 1977 was filed by Hari against his son Magan and daughter in law Chhabibai for permanent injunction. The suit filed by Hari being Regular Civil Suit No. 102 of 1977 against his son came to be dismissed and suit filed by son Magan being Regular Civil Suit No. 7 of 1978 for

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permanent injunction came to be decreed by common judgment dated 22nd October, 1981 and father and brother of plaintiff Magan namely Uttam were restrained from disturbing possession of the suit property.

2. Feeling aggrieved thereby, Hari preferred appeal being Regular Civil Appeal No. 376 of 1981 before District Judge, Dhule, wherein judgment of dismissal of the suit was affirmed. Against the judgment passed in Regular Civil Suit No. 7 of 1978, the appellate Court passed separate judgment thereby on merit negating the claim of the present appellant thereby dismissing his other appeal also. As such, second appeals.

3. Original defendant Magan and his wife Chhabibai i.e. daughter in law of appellant Hari expired and therefore their son Ganesh is brought of record as respondent to appeal.

4. This Court, while admitting the appeal,

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has admitted the same on the ground Nos. 3, 6 and additional ground 'whether appellant would be entitled to his share as the property is joint and ancestral.

5. Ground No. 3 is in regard to the burden on the present appellant to prove that he was in possession of the land on the date of suit, whereas Ground No. 6 is in regard to the recording of further evidence.

6. In view of lapse of time, particularly death of original defendants Magan and Chhabibai, in my opinion, nothing is remained to be contested in the present appeals. As such, same stands disposed of.

7. Pending civil application stands disposed of.

(N.W. SAMBRE, J.)