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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.507 OF 2016

Bhanudas Govind Shelar

APPELLANT

VERSUS

Anna Govind Shelar and Others

RESPONDENTS

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Mr. Sudarshan J. Salunke, Advocate for the appellant

Mr. H. V. Tungar, Advocate for respondent No.1

Mr. H. B. Pawar, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 15th MARCH, 2017

ORDER :

1. Heard learned advocates for the parties.
2. The appellant is defendant No.1 in Regular Civil Suit No.133 of 2005 filed at the instance of respondent No.1 against appellant and respondents No.2 and 3. Respondent No.3 – mother of appellant and respondents No.1 and 2, is no more and her interest is being represented by the parties to the second appeal.
3. After hearing learned advocates, it transpires that the dispute is confined in relation to property bearing Survey

No.224/A/2 now bearing Gut No.631 situated at village Nirgudi, Taluka – Patoda, District – Beed, which is contended to have been purchased by the appellant independently and is his self acquired property. The appellant, in his written statement, had contended that said property had been purchased by him under a registered sale deed in 1974 and accordingly the same had been entered into revenue record. In 1976, partition, pursuant to directions of father had taken place and the same is depicted by causing mutation entries and in the same, aforesaid property was shown to have belonged to defendant No.1.

4. Learned advocate for the appellant submits, although such were pleadings, yet, defendant No.1 being old man, not being literate and capable of appreciation of the material reduced into writing, had signed the affidavit of examination in chief and he was guided by the advice received by him. He was not aware that an admission under the examination in chief had been incorporated, which was to work against his interest. In the circumstances, learned advocate for the appellant urges to remand the matter in order to let an opportunity to defendant No.1 to prove his case with regard to Gut No.631.

5. Thus, it emerges that there is no serious dispute about rest

of the properties of which partition had been sought, save Gut No.631.

6. Learned counsel for the respondents submits that aforesaid ground now being raised had not been raised in the memorandum of appeal. In the circumstances, the appellant is estopped from taking up the plea, which does not form a ground before the appellate court.

7. Learned advocate for the respondent No.1 has argued that though the appellant urges for remand, looking at the evidence, which has been placed on record and particularly its recoding by the learned judge himself shows that the document – examination in chief had been read over to appellant and had been understood by the appellant and thereafter verdict had been given by the court. Such an appreciation and finding is confirmed under judgment of the appellate court.

8. Learned advocate for the appellant, however, refers to the submission of counsel on behalf of the appellant that a party would not give evidence against his own interest and as such, the matter be remanded.

9. Although, aforesaid are contentions, one will have to

consider that the source from which consideration for acquisition of property in 1974 had been paid by defendant No.1, has neither been pleaded and disclosed nor evidence in respect of the same is on record nor query in respect of the same could be responded to by any credible explanation nor it appears to be a case wherein defendant No.1 has pleaded that he had, apart from joint family properties, other source of income.

10. In the circumstances, there does not appear to be any possibility, even if the matter is sent back for reconsideration, that the opportunity which is requested to be given, would give any pragmatic benefit to defendant No.1.

11. Second appeal, as such, does not carry any substance with it and the same stands dismissed.

12. In view of dismissal of the second appeal, civil application No.10403 of 2016 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]