IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 205 OF 2016
WITH
CIVIL APPLICATION NO. 2935 OF 2016

1. Kisan s/o Dhyanu Rathod,
   Age : 91 years,
   Occupation : Agriculture,
   R/o Shiradhon, Taluka Kallam,
   District Osmanabad.

2. Tulshiram s/o Dhyanu Rathod,
   Age : 66 years,
   Occupation : Agriculture,
   R/o Shiradhon, Taluka Kallam,
   District Osmanabad. .. **APPELLANTS.**

VERSUS

1. Bhimrao s/o Umaji Pawar,
   Age : 66 years,
   Occupation : Agriculture,
   R/o Shiradhon, Taluka Kallam,
   District Osmanabad.

2. Sitabai w/o Bhimrao Pawar
   Age : 56 years,
   Occupation : Agriculture,
   R/o Shiradhon, Taluka Kallam,
   District Osmanabad.

3. Poma s/o Umaji Rathod,
   Age : 66 years,
   Occupation : Agriculture,
   R/o Shiradhon, Taluka Kallam,
   District Osmanabad.

4. Dhondabai Kaneram Rathod,
(Pawar)(Died), Her L.Rs.

4-A. Rajabhau s/o Kanerao Pawar,
Age : 51 years,
Occupation : Agriculture,
R/o Shiradhon, Taluka Kallam,
District Osmanabad.

4-B. Daulat s/o Kaneram Pawar,
Age : 46 years,
Occupation : Agriculture,
R/o Shiradhon, Taluka Kallam,
District Osmanabad.

4-C. Nateram s/o Kaneram Pawar,
Age : 41 years,
Occupation : Agriculture,
R/o Shiradhon, Taluka Kallam,
District Osmanabad.

4-D. Dhurabai w/o Dileep Rathod,
Age : 41 years,
Occupation : Agriculture,
R/o Shiradhon, Taluka Kallam,
District Osmanabad.

5. Bhanudas s/o Dhyanu Rathod,
Age : 56 years,
Occupation : Agriculture,
R/o Shiradhon, Taluka Kallam,
District Osmanabad. .. **RESPONDENTS**

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Mrs. Shubhangi D. More and Mr. K.D. Jadhav, Advocates for the appellants.
Mr. U. B. Bilolikar, Advocate for the respondents.

CORAM : SANGITRAO S. PATIL, J.

DATE : 26th JULY, 2017

ORAL ORDER :

The appellants have challenged the judgment and decree dated 26.10.2016 passed in Regular Civil Appeal No. 92 of 2014 by the District Judge-3, Osmanabad, confirming the judgment and decree dated 28.02.2014 passed in Regular Civil Suit No. 316 of 2009 by the learned Joint Civil Judge, Junior Division, Kallam, whereby the suit for declaration of title to the suit land and perpetual injunction to protect possession of the appellants over the suit land came to be dismissed.

02. The learned counsel for the appellants submits that the deceased Dhyanu, who was the father of appellant Nos. 1 to 3, had purchased 7 Acres and 12 Gunthas of land out of survey No. 411 of village Shiradhon, Taluka Kallam, District Osmanabad, from one Sahebrao Kisan Patil under a

registered sale-deed as per the provisions of Section 38-E of the Hyderabad Tenancy and Agriculture Land Act, 1950 ('H.T.A.L.Act'for short) since the deceased Dhyanu was protected tenant of that land. Since then he was in actual possession of the said land. After the demise of Dhyanu, the appellants cultivated the said land. The respondents have no concern whatsoever with the suit land, but they tried to disturb possession of the appellants and, therefore, the suit came to be filed. She submits that the question of tenancy was involved in the suit, which was required to be referred to the tenancy Court for decision. Without the decision of the tenancy Court, the suit should not have been decided by the trial Court as well as the first appellate Court. According to her, the judgment of the trial Court and first appellate Court are not sustainable for want of decision in respect of tenancy issue. Therefore, for deciding this

question of law, second appeal may be admitted.

03. On the other hand, the learned counsel for the respondents submits that the father of respondent No. 1, namely Umaji Mansing Pawar had purchased the land admeasuring 12 Acres 10½ Gunthas out of survey No. 411 from the original owner Sahebrao Bhimrao Patil in the year 1968. Mutation entry No. 843 has been taken to that effect in the Record of Rights of that land. Accordingly, the deceased Umaji was cultivating that land. After his demise, the respondents succeeded that land. They are in actual possession thereof. The deceased Dhyanu had sold out 4 Acres 5 Gunthas of land out of the land that was purchased by him from Sahebrao Patil to one Topa Mansing Laman and Mansing Laxman Laman. However, instead of making those purchasers as parties to the suit, the present suit has been wrongly filed and against these respondents. He submits that the trial Court as well as first appellate Court

have rightly considered these factual aspects and rightly dismissed the suit. According to him, no substantial question of law is involved in this appeal.

4. From the Mutation entry No. 843, it is clear that, the deceased Umaji Pawar had purchased 12 Acres and 10½ Gunthas of land out of Survey No. 411 from the original owner Sahebrao Kisanrao Patil in the year 1968. The said land was not governed by the H.T.A.L. Act. The deceased Umaji had not purchased any land out of the land that has been purchased by the deceased Dhyanu from the Sahebrao Patil under the provisions of H.T.A.L. Act. Consequently, the question of application of any provisions of H.T.A.L. Act in respect of the land that has been purchased by the deceased Umaji from the deceased Sahebrao Patil would not arise.

05. The trial Court as well as the first appellate Court specifically held that the

appellants failed to establish their possession over the land admeasuring 7 Acres 12 Gunthas out of survey No.411. These concurrent findings of fact cannot be interfered in this Second Appeal. There is no substantial question of law involved in the Second Appeal.

06. The appellants may initiate necessary legal proceedings, as permissible under the law, in case, they wish to vindicate any right in respect of the land that was purchased by their father from the deceased Sahebrao Patil. Hence, the order :-

O R D E R

i. The Second Appeal is dismissed.

ii. No costs.

iii. In view of dismissal of the Second Appeal, the Civil application is disposed of.

Sd/-

[SANGITRAO S. PATIL, J.]

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