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

**SECOND APPEAL NO. 217 OF 2017
WITH
CIVIL APPLICATION NO. 3749 OF 2017**

Dattatraya Khanderao Kulkarni,
Age: 72 years, Occu: Retired,
R/o. 19/1, Flat No.103,
State Bank Colony, Kothrud,
Pune 38

..APPELLANT
(Orig.Plaintiff)

VERSUS

1. Khanderao Eknath Kulkarni,
(deceased)
2. Balu Gulab Labade,
Age: 48 years, Occu: Agriculture
3. Vijay Kondibhau Patake,
Age: 46 years, Occu: Business

R.No.2 and 3 R/o. Belwandi (Bk)
Tq. Shrigonda, Dist. Ahmednagar
4. Sau. Nirmala Madanrao Mutalik,
Age: 75 years, Occu: Household,
R/o. Plot No.17, Building No.1,
Anandpark, Vitthal Nagar Society,
Pune 51
5. Shyamkant Khanderao Kulkarni,
(since deceased, thr. L.Rs.)
- 5a. Shubhada Shyamkant Kulkarni,
Age: 67 years, Occu: Household
- 5b. Shashank Shyamkant Kulkarni,
Age: 43 years, Occu: Service,

R.Nos. 5a and 5b R/o. 1540B,
Kasba Peth, Near Arnvidyut School,
Near Shankarcharya Mandir,
Near Gavkose Maruti, Pune

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- 5c. Mrs. Shilpa Mangesh Sashte,
Age: Major, Occu: Household,
R/o. Jyotirmaya Baijabai Society,
Behind Hotel Sagar, Pipeline Road,
Savedi, Ahmednagar
6. Sau. Rajani Suhasrao Kulkarni,
Age: 66 years, Occu: Household,
R/o. 58, Sadabahar Society,
Near Kajba Ganpati,
Pune 11
7. Sau. Madhuri Prakash Kulkarni,
Age: 64 years, Occu: Household,
R/o. 84/48, Trimurti Housing Society,
Shivtirtha Nagar, Near Kinara Hotel,
Kothrud, Pune 38
8. Smt. Vasanti Balasaheb Kulkarni,
R/o. 50 years, Occu: Household
9. Abhijit Balasaheb Kulkarni,
Minor, under guardian of
Respondent No.8
Vasanti Balasaheb Kulkarni
10. Chaitrali Balasaheb Kulkarni,
Minor, under guardian
Respondent No.8,
Vasanti Balasaheb Kulkarni,
Respondent No.8 to 10
R/o. Anant Dhondo Diggikar,
2/40, Mukundnagar, C.P.W.D.
Pune 37
11. Smt. Vinita Vilas Kulkarni,
Age: 50 years, Occu: Household
12. Vinit Vilas Kulkarni,
Age: 32 years, Occu: Service
13. Vishwajit Vilas Kulkarni,
Age: 30 years, Occu: Education
14. Gayatri Vilas Kulkarni,
Minor, under guardian
respondent No.11,
Vinita Vilas Kulkarni,

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Respondent Nos.11 to 14
R/o. Gayatri Sadan, Pipeline Road,
Datta Nagar, Savedi, Ahmednagar,
District Ahmednagar

..RESPONDENTS

Mr A. V. Hon, Advocate for appellant

CORAM : N.W. SAMBRE, J.

DATE : 5th July, 2017

ORAL ORDER

The appellant-plaintiff filed Special Civil Suit No.25 of 2007 alleging that the suit property being City Survey No.518, Grampanchayat house No.627, ad measuring 53.7 Sq. Mtr. and house constructed thereon is a joint family property of plaintiff, defendant and defendants no.4 to 14. According to him, defendant no.1 initially executed Exh.77 – sale deed of the said property in the year 1993 in favour of defendant no.2, who in turn executed sale deeds in favour of defendant no.3 vide Exhs.75 and 76. According to him, the undivided share of the present appellant should not have been transferred by the father of defendant no.1. As such, suit for partition and separate possession.

2. The suit came to be dismissed by judgment and decree dated 7th July, 2010, which was confirmed in Regular Civil Appeal No.409 of 2012 by judgment and decree dated 14th December, 2016 passed by District Judge, Ahmednagar. Thus, the present second Appeal.

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3. Mr Hon, learned Senior Counsel appearing on behalf of the appellant would urge that while recording findings as regards entitlement of the share of the appellant in the said property being ancestral property, it was held by the appellate court that the appellant has share in the suit property. In view thereof, it was expected of the Courts below to decree the suit of the appellant. According to him, the same is a substantial question of law involved in the present appeal.

4. With the assistance, I have perused the findings recorded by the Courts below.

5. The suit property initially came to be transferred for a valid consideration by defendant no.1 in favour of defendant no.2 way back in 1993. Defendant no.2 thereafter transferred the suit property in favour of defendant no.3 in the year 2006. The age of the appellant as on date is 65 years. It is for last more than 22 years the appellant has neither questioned the sale deed nor filed a suit for partition against his father and other brothers. Defendant no.1 has expired on 10th October, 2009 i.e. after filing of the suit and he has not resisted the claim made by the appellant-plaintiff his son.

6. The Trial Court then proceeded to analyze the claim of the appellant and observed that the appellant-plaintiff has not come out with a case that the sale in question was not for legal necessity. In such eventuality, the findings of both the Courts below particularly on the issue of entitlement of

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share of the appellant in the suit property has been rightly decided and it is held that the appellant is not entitled for the prayer for decree of a partition and possession. There is one more ground for rejection of the claim of the appellant and that is, the suit property is consisting of 53.70 Sq. mtrs. i.e. around 560 Sq. ft., in which there are in all eleven claimants. If the claim of the appellant is allowed, at the most he will be entitled for 50 Sq. ft. of the land from the said property.

7. In view thereof, in my opinion, Second Appeal lacks merit and stands dismissed. In view of dismissal of Second Appeal, Civil Application No.3749 of 2017 does not survive and stands disposed of accordingly.

(N.W. SAMBRE, J.)

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