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

**SECOND APPEAL NO. 618 OF 2014
WITH
CIVIL APPLICATION NO.407 OF 2017
IN
SECOND APPEAL NO. 618 OF 2014**

1. Manohar s/o Harchand Warke,
Age: 68 years, Occ: Retired,
R/o. Professor Colony, Jamner
Road, Bhusawal, Dist. Jalgaon.
2. Sudhakar s/o Harchand Warke,
Age: 63 years, Occ: Retired,
R/o. Professor Colony, Jamner
Road, Bhusawal, Dist. Jalgaon.
3. Bharat s/o Manohar Warke,
Age: 40 years, Occu: Labour work,
R/o Professor Colony, Jamner Road,
Bhusawal, Dist. Jalgaon
4. Chandrakant s/o Manohar Warke,
Age: 38 years, Occu: Labour,
R/o Professor Colony, Jamner Road,
Bhusawal, Dist. Jalgaon
5. Jitendra s/o Sudhakar Warke,
Age: 35 years, Occu: Labour,
R/o Professor Colony, Jamner Road,
Bhusawal, Dist. Jalgaon
6. Kiran s/o Sudhakar Warke,
Age: 32 years, Occu: Private Service,
R/o Professor Colony, Jamner Road,
Bhusawal, Dist. Jalgaon ..APPLICANTS

VERSUS

1. Sau. Sumanbai Hiralal Patil,
Age: 68 years, Occu: Household,

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R/o Gangaram Plot, Near Jumman
Chawl, Bhusawal, Dist. Jalgaon

2. Sau. Vatsalabai Gambhir Patil,
Age: 63 years, Occu: Household,
R/o Sakri, Tal. Bhusawal,
Dist. Jalgaon
 3. Sau. Sushilabai Devidas Bhoge,
Age: 59 years, Occu: Household,
r/o Akrud Chowk, Patankar Road,
Bhusawal, Dist. Jalgaon
 4. Sau. Ushabai Ramesh Patil,
Age: 55 years, Occu: Household,
R/o villas Amoda, Tal. Yawal,
Dist. Jalgaon
 5. Devidas Harchand Warke,
Age: 57 years, Occu: Labour/Agri.
R/o Professor Colony, Jamner Road,
Bhusawal, Dist. Jalgaon
 6. Tushar s/o Devidas Warke,
Age: 28 years, Occu: Labour,
R/o Professor Colony, Jamner Road,
Bhusawal, Dist. Jalgaon
- ..RESPONDENTS

Mr P.R. Katneshwarkar, Advocate for appellants;
Mr D. A. Madake, Advocate holding for Mr P. B.
Gamot, Advocate for respondent Nos. 1, 3 and 4

CORAM : N.W. SAMBRE, J.

DATE : 12th JUNE, 2017

ORAL ORDER :

This appeal is by the original plaintiffs

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against the concurrent findings of the Courts below.

2. One Harchand is the predecessor-in-title of the parties to the suit, who died on 10th August, 2001 leaving behind agriculture and non-agriculture property. The plot bearing survey No.135/2/8 located at Bhusawal was subject matter in Regular Civil Suit No.250 of 2001, which was filed by present respondents, who were daughters of deceased Harchand for declaration, partition, separate possession and perpetual injunction. The said suit came to be decreed by learned Civil Judge, Junior Division, Bhusawal and it was declared that present respondents-plaintiffs and defendants have 1/7th share each in the suit property.

3. Original defendants, feeling aggrieved thereby, preferred Regular Civil Appeal No. 277 of 2006 questioning the judgment and decree in the said suit. The appellate Court, vide judgment and

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order dated 15th February, 2014 dismissed the appeal. As such, present second appeal.

4. Amongst other grounds that is sought to be canvassed by Mr. Katneshwarkar, learned Counsel for the appellants-original defendants is, once the property was mutated in the name of appellants being Mutation Entry No. 9740, it was incumbent on the part of both the Courts below to reject the claim of the plaintiffs' sisters. So as to substantiate the contention, he would harp upon Mutation Entry No. 9740 to that effect in favour of present appellants-defendants. Apart from above, according to him, the Courts below have failed to appreciate the evidence of respective parties brought on record.

5. Per contra, learned Counsel for the respondents would urge that there is hardly any substance in the submissions made as appeal lacks substantial question of law. According to him, in view of concurrent findings, this Court needs to be

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slow in interfering and sought dismissal of the appeal.

6. The trial Court framed issues pursuant to the pleadings of parties at Exhibit-24 and answered the issue about execution of will in favour of the defendants. The claim of plaintiffs that they had share in the suit property was answered to be proved and it was with specification that the plaintiffs have share in the suit property being Survey No. 135/2/8.

7. In support of such claim based on the will, the trial Court has considered the evidence of plaintiff No. 3 Sushilabai at Exhibit-25 as PW-1, Dr. Rajesh Gupta at Exhibit-57 as PW-2, Dr. Anil Chaudhari at Exhibit-58 as PW-3 and Dr. Ulhas Rushi at Exhibit-64 and apart from above, the issue as regards the suit property, which is self acquired property of deceased Harakchand was answered in favour of the parties to the suit to that effect. It is then to be noted that trial Court proceeded

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to consider the revenue entry in relation to the property in question i.e. Plot being Survey No. 135/2/8. Admittedly, the said property was not subject matter of the will. Though there was admission that the said property was mutated in the name of original defendant Nos. 1 to 3 i.e. present appellants vide Mutation Entry No.9740, the trial Court proceeded to consider that the property cannot be transferred in such a manner in favour of the defendants-present appellants.

8. While re-appreciating the evidence, lower appellate Court upheld the said findings and noted that each of the parties to the suit had 1/7th share in the suit property.

9. Once having appreciated aforesaid findings in the backdrop of pleadings and evidence brought on record, I hardly see any material to infer that the findings recorded by both the Courts below call for any interference based on the alleged substantial question of law. The appeal lacks

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merit and stands dismissed.

10. In the light of dismissal of second appeal, civil application for stay stands dismissed.

(N.W. SAMBRE, J.)

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