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

**SECOND APPEAL NO. 521 OF 2017
WITH
CIVIL APPLICATION NO.9995 OF 2017
CIVIL APPLICATION (ST) NO.34168 OF 2017
IN
SECOND APPEAL NO.521 OF 2017**

Ashabai w/o Sahebrao Gadekar,
Age: 65 years, Occ: Agri.,
R/o. Pimpalgaon Shermulki,
Tq. Bhokardan, Dist. Jalna. ..APPELLANT

VERSUS

1. The State of Maharashtra,
Through Collector, Jalna.
2. Tahsildar, Tahsil office,
Bhokardan.
3. Superintendent of Land Records,
Bhokardan.
4. Devidas Balwanta Fuke,
Age: 55 years, Occ: Labour,
5. Haridas Balwanta Fuke,
Age: 70 years, Occ: Labour,
6. Kasturabai Pundlik Fuke,
Age: 70 years, Occ: Labour,

Respondent Nos. 1 to 6
R/o. Nimkheda, Tq. Phulambri,
Dist. Aurangabad. ..RESPONDENTS

Mr M.K. Deshpande, Advocate for appellant;
Mr A.P. Basarkar, A.G.P., for respondent Nos. 1 to
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CORAM : NITIN W. SAMBRE, J.**DATE : 12th OCTOBER, 2017****ORAL ORDER :**

The predecessor-in-title of present appellant was brother of one Balwant, who filed Regular Civil Suit No.56 of 1982 for partition, which was decreed on 18th June, 1985, to which, the appellant was also a party.

2. After said suit was decreed, to overcome of the said partition decree, the appellant - original defendant to Regular Civil Suit No. 56 of 1982 filed Regular Civil Suit No. 459 of 2011 claiming that the decree passed in Regular Civil Suit No. 56 of 1982 on 18th June, 1985 has rendered redundant, as original plaintiff Balwant has alienated the property of his share during pendency of Regular Civil Suit No.56 of 1982 or subsequent thereto.

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3. The trial Court held that the suit initiated by present appellant is barred by limitation, which was confirmed in appeal. As such, this second appeal.

4. Learned Counsel for the appellant submits that in view of transfer of the property which was covered under the partition decree dated 18th June, 1985, Balwant has extinguished his share to the extent of such transfer. According to him, the property transferred was from joint holding being co-owner. According to him, the question of law needs to be framed on that issue.

5. Considered said submissions. In my opinion, present second appeal, which is against concurrent findings, is liable to be dismissed for the following reasons.

(a) The appellant was a party to earlier suit being Regular Civil Suit No.56 of 1982, in which, it was always open for him to canvass the very

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conduct of the plaintiff Balwant by transferring share.

(b) The decree in earlier suit being Regular Civil Suit No. 56 of 1982 for partition has already attained finality and said partition is sought to be re-opened by the appellant-stranger to the joint family property, who claims his right through sale deed dated 9th September, 1982, which is not permissible, same having attained finality.

6. The conduct of the appellant has to be viewed as nothing more than the attempt to frustrate execution of the decree passed in Regular Civil Suit No. 56 of 1982 on 18th June, 1985.

7. It was always open for the present appellant to raise objection about his entitlement qua part of his share to which by virtue of decree in Regular Civil Suit No. 56 of 1982, during course of execution.

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8. As such, second appeal fails and stands dismissed.

9. Pending civil applications stand disposed of.

(NITIN W. SAMBRE, J.)

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