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

**SECOND APPEAL NO. 501 OF 2017
WITH
CIVIL APPLICATION NO. 14906 OF 2016
WITH
SECOND APPEAL NO. 502 OF 2017
WITH
CIVIL APPLICATION NO. 14904 OF 2016**

1. Sau. Pratibha Jagannath Teli,
Age: 53 years, Occu: Housewife
2. Dr. Jagannath Taniram Teli,
Age: 55 years, Occu: Doctor,
Both R/o Gondegaon,
Tal. Soygaon, Dist. Aurangabad ..APPELLANTS

VERSUS

Raghunath s/o Pandit Choudhari,
Age: 53 years, Occu: Tailor,
R/o Shivaji Nagar, Tal. Pachora,
Dist. Jalgaon ..RESPONDENT

Mr C. T. Jadhav, Advocate holding for Mr K. M.
Nagarkar, Advocate for appellants;
Mr G. V. Wani, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 27th JULY, 2017

ORAL ORDER :

The respondent filed Regular Civil Suit
No. 62 of 1998 seeking relief of declaration,

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partition and permanent injunction. The declaration that was sought was, sale deed Exhibit-37 is not binding.

2. The suit came to be partly decreed vide judgment and order delivered by the learned Civil Judge, Junior Division, Pachora on 30th August, 2008 in Regular Civil Suit No. 68 of 1998. Learned trial Court declared that the sale deed dated 5th March, 1997 i.e. Exhibit-37 between the plaintiff and defendant about east side portion of the suit plot is null and void and defendant No.1 i.e. present appellant has not acquired any right from the same.

3. Since the suit was partly decreed, two appeals came to be filed, one by the plaintiff i.e. Regular Civil Appeal No. 193 of 2008 questioning the judgment of the trial Court to the extent of refusing partition and Regular Civil Appeal No. 217 of 2009 by present appellants questioning the cancellation of sale deed. Both these appeals were

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decided by common judgment dated 21st February, 2015 whereby learned District Judge, Jalgaon dismissed the appeal preferred by the present appellants and allowed the appeal that was filed by present respondent, thereby decreeing the suit in its entirety. As such, these second appeals.

4. Learned Counsel for the appellants would invite attention of this Court to the pleadings of the present respondent-plaintiff in Regular Civil Suit No. 50 of 1997 wherein, according to him, respondent-plaintiff has admitted factum of partition. He would then urge that said admissions were confronted to the plaintiff in the cross examination and has given admission about the partition of the suit property. He would, as such, submit that the decree for partition in the aforesaid background is not sustainable.

5. The next submission of learned Counsel for the appellants is, the sale deed executed and partition effected is proved by virtue of evidence

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of three witnesses by the present appellants-defendants. He would also invite attention of this Court to the evidence of Court Commissioner, wherein it is brought on record that by fixing boundary vide installing limestone, partition could be noticed by metes and bounds.

6. While countering the aforesaid submissions, learned Counsel for the respondent-plaintiff submits that if testimony of present respondent-plaintiff is read, admission of partition is very much explained. According to him, prayer for partition is based on joint purchase of suit property by the present appellants and respondent on 5th May, 1997.

7. The appellant Nos. 1 and 2 are husband and wife and it is appellant No.1 who has executed disputed sale deed on 5th March, 1997 in favour of his wife - appellant No.2. According to him, the evidence of hand writing expert and failure on the part of appellants to produce original sale deed

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speaks voluminous about very conduct of the appellants. According to him, against concurrent findings, particularly on the issue of sale deed, the appeals are liable to be dismissed.

8. Having bestowed my thoughts to the submissions made, I have perused the evidence of present respondent No.1 i.e. original plaintiff. When he was confronted with his pleadings in Regular Civil Suit No. 50 of 1997, such confrontation of the respondent-plaintiff is in the light of admission given by him that there was partition of the property. Though there is pleading on the issue of partition by the respondent-plaintiff, however, same is duly explained by the respondent.

9. On record, there does not appear any document, which speaks of partition of the suit property by metes and bounds. Admittedly, the property in question is not ancestral but the plaintiff and defendants have acquired the same by

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virtue of sale deed dated 16th December, 1991. The claim for partition, in such eventuality, the appellate Court was right in concluding that partition has to be by virtue of written recitals in the form of an instrument and not oral partition. Apart from above, the fact remains that transfer of the share of the respondent-plaintiff, claimed to be by virtue of impugned sale deed dated 5th March, 1997. The said sale deed is executed by appellant No.1 in favour of appellant No.2 who is his wife. When directed by both the Courts below, the appellants had failed to produce original sale deed, so also same is not produced before this Court. As such, both the Courts below have drawn adverse inference against the appellants as regards sale deed between appellant No. 1 and appellant No.2, which appears to be just and proper.

10. So far as the issue of partition is concerned, as stated herein before, the explanation given by the present respondent-plaintiff during his cross examination, particularly about

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admissions given by him of partition was accepted by both the Courts below. Once both the Courts below based on the pleadings and evidence have recorded findings of fact that admission was explained and interpreted against the present appellant, I hardly see any material, which goes to demonstrate and prompts this Court to record findings that there was partition between the parties.

11. For the aforesaid reasons, I hardly notice any involvement of substantial question of law, present second appeals fail and stand dismissed.

12. Consequently, pending civil applications also stand dismissed.

(N.W. SAMBRE, J.)