

(1)

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

**SECOND APPEAL NO. 421 OF 2017
WITH
CIVIL APPLICATION NO.8053 OF 2017**

Gajanan s/o Narayan Shinde,
Age: 31 years, Occu: Agriculture,
R/o Hadgaon (Bu.), Taluka Pathri,
District Parbhani ..APPELLANT

VERSUS

1. Bhagiratibai @ Taramati w/o
Asaram Nakhate,
Age: 51 years, Occu: Agriculture,
R/o. Rampuri(Kh.), Tq. Pathri,
District Parbhani
2. Baburao s/o Ambadas Nakhate,
Age: 63 years, Occu: Agriculture,
R/o Hadgaon (Bu.), Tq. Pathri,
District Parbhani ..RESPONDENTS

Mr P. S. Paranjape, Advocate for appellant

CORAM : N.W. SAMBRE, J.

DATE : 6th JULY, 2017

ORAL ORDER :

The appellant-plaintiff filed Regular Civil Suit No.68 of 2009 in the Court of Civil Judge, Junior Division, Pathri, District Parbhani seeking declaration that he is owner of the suit

(2)

property.

2. The said suit came to be dismissed on 13th October, 2011, which judgment was further confirmed in Regular Civil Appeal No. 73 of 2015 passed by learned lower appellate Court. As such, this second appeal.

3. While recording the findings by the Courts below, it is brought to the notice of this Court by Mr. Paranjape, learned Counsel for the appellant that he sought declaration of title in his favour based on his relation and successor of deceased Ashroba. According to him, in response to the suit claim, defendants-respondents have come out with plea that widow of Ashroba namely Ansabai has executed registered sale deed dated 7th June, 1966 in his favour and as such, they became owner of the suit property. He would then urge that in the aforesaid factual matrix, the claim before the Courts below are far away from truth as Ansabai expired on 29th April, 1964 as such, she was not

(3)

available to execute sale deed on 7th June, 1966.

4. While considering above referred submissions, it is required to be noted that as regards issue of death of Ansabai on 29th April, 1964 for the first time raised before this Court, that too in absence of any evidence to that effect.

5. In view of above, in absence of any evidence, the claim of appellant-plaintiff as was evaluated by the trial Court, particularly on claim that he is successor of Ansabai was rightly appreciated and rejected. No case for interference in second appellate jurisdiction is made out. As such, second appeal fails, stands rejected.

6. Consequently, civil application stands dismissed.

(N.W. SAMBRE, J.)