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

SECOND APPEAL NO.166 OF 2017

Shivdas s/o Bhaurao Baglane,
Age : 72 years, Occu. Agri.,
R/o Kakadhira, Tq. & Dist. Beed ..APPELLANT
(Orig. Plaintiff)

VERSUS

1. Sau. Rekha w/o Dattatray Pawar,
Age : 55 years, Occu. Household,
2. Dattatray s/o Shripati Pawar,
Age : 60 years, Occu. Service,

Both R/o Samarhkrupa,
Bhagyanagar, Beed,
Tq. & Dist. Beed ..RESPONDENTS
(Orig. Defendants)

Mr Vilas P. Savant, Advocate for appellant;
Mr P.P. More, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 14th June, 2017

ORAL ORDER

The present appellant-original plaintiff had instituted Regular Civil Suit No.57 of 2011 before Civil Judge Junior Division, Beed, seeking relief of re-conveyance of the sale deed of Block No.188, ad measuring 81 R, situated at village Pimpergavan, District Beed, which came to be dismissed and the said decree was further confirmed in appeal. Thus, the present Second Appeal.

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2. Amongst other, the grounds as are canvassed by the learned Counsel appearing on behalf of the appellant are, both the Courts below have committed an error by failing to appreciate the oral understanding between the parties. He would pray this Court to re-appreciate the evidence and reach to a finding that the suit needs to be decreed.

3. With the assistance, I have perused judgments and decrees rendered by both the Courts below. The lower appellate court, while considering the nature of transaction, particularly dated 27th January, 2000 in respect of suit property, has upon appreciation of the evidence noticed the same to be a blanket sale transaction which had no colour of any mortgage transaction. There are also findings recorded that the present respondents had never agreed to re-convey the property to the present appellant-plaintiff. The Trial Court was alive of the provisions of Section 92 of the Indian Evidence Act, particularly first proviso thereto. The lower appellate court then re-appreciated the evidence at the behest of the present appellant and endorsed the findings recorded by the Trial Court.

4. Having reconsidered the judgments rendered by both the Courts below, I hardly notice any substantial question of law and in my opinion, the submissions are canvassed with an intention to re-appreciate the

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evidence, which is not permissible while exercising second appellate jurisdiction. Thus, the Second Appeal lacks merit and stands dismissed.

(N.W. SAMBRE, J.)

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