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

**CIVIL APPLICATION NO.5708 OF 2016
IN/WITH
SECOND APPEAL NO.608 OF 2017**

1. Shri Sonyabapu s/o Haribhau Khedkar,
Age: 71 years, Occ. Agriculture,
R/o Dahiwandi, Tq. Shirur Kasar,
Dist. Beed
 2. Shri Dashrath s/o Haribhau Khedkar,
Age : 65 yrs, occu-nil,
R/o Dahiwandi, Tq. Shirur Kasar,
Dist. Beed
- ..APPELLANTS
(Ori. Plaintiffs)

VERSUS

1. Shri Tukaram s/o Limbaji Aghav,
Age : 70 yrs, Occ. Agriculture,
R/o Dahiwandi, Tal. Shirur Kasar,
Dist. Beed
 2. Smt. Chandrabhaga W/o Tukaram Aghav,
Age : 55 years, Occ. Agri.,
R/o Dahiwandi, Tal. Shirur Kasar,
Dist. Beed
 3. Shri Shavaji s/o Tukaram Aghave,
Age : 40 yrs, Occ. Agril.,
R/o Dahiwandi, Tal. Shirur Kasar,
Dist. Beed
 4. Shri Damu s/o Tukaram Aghave,
Age : 45 yrs., Occ. Agril.,
R/o Dahiwandi, Tal. Shirur Kasar,
Dist. Beed
 5. Shri Gangadhar s/o Tukaram Aghav,
Age : 55 yrs, Occ. Service,
R/o Dahiwandi, Tal. Shirur Kasar,
Dist. Beed
- ..RESPONDENTS
(Ori. Defendants)

Mr R.B. Dhakane, Advocate for appellants;
Mr Ameet R. Vaidya, Advocate for respondents

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CORAM : NITIN W. SAMBRE, J.

DATE : 9th October, 2017

ORAL ORDER:

Based on title, the appellants-plaintiffs filed Regular Civil Suit No.206 of 2004 (old)/55 of 2008 (new) for declaration and perpetual injunction in regard to land old survey no.43/A, new Gat No.297, ad measuring 1 Hectare 95 R. The suit came to be dismissed vide judgment and decree dated 18th November, 2009, which was further confirmed in Regular Civil Appeal No.178 of 2009. Thus, this Second Appeal.

2. Mr Dhakane, learned Counsel appearing on behalf of the appellants invited attention of this Court to a registered sale deed in favour of the appellants depicting that the title of the suit property viz. land Gat No.297 stood transferred to them way back on 3rd December, 1966. They have produced a document to that effect before this Court. When confronted, Mr Dhakne would urge that the said document is part and parcel of the record of the Courts below, however, for unexplained reasons the same was not gone into. As such, according to him, the appellants-plaintiffs be granted an opportunity to produce the same and this Court should pass appropriate order referring back the matter to the lower appellate court for recording evidence on the issue of said sale deed and certificate of transfer issued under Section 24 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

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3. Mr Dhakane would urge that for such default, the appellants are ready and willing to compensate the respondents by depositing costs of Rs.10,000/- before this Court, to which the respondents-defendants would be entitled to.

4. As Mr Vaidya, learned Counsel appearing on behalf of the respondents-defendants does not dispute the position that certified copy of the sale deed in question was very much produced on record and extends consent for passing appropriate order under Order XLI, Rule 27 of the Code of Civil Procedure.

5. In view of above, I pass following order:-

Civil Application No.5708 of 2016 is allowed and the appellants-plaintiffs are permitted to produce on record copies of sale deed bearing No.3653 of 1966 and sale certificate under Section 24 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act as additional evidence.

The entire record be sent back to the lower appellate court, viz. learned District Judge, Beed, before whom parties agree to appear on 6th November, 2017.

Learned District Judge, Beed shall record evidence *qua* title of the present appellants-plaintiffs to land Gat No.297, after giving appropriate opportunity to the respective parties and submit the same to this Court.

(4)

Let this exercise be completed within a period of three months from the date of first appearance of the parties before the lower appellate court.

The lower appellate Court shall re-transmit the record and proceedings to this Court along with evidence so recorded.

Registry to ensure that the record and proceedings reaches the lower appellate court before 6th November, 2017.

(NITIN W. SAMBRE, J.)

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