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

**SECOND APPEAL NO. 546 OF 2015**

1. Yogiraj S/o Dhondiba Navale,  
age 73 years,
2. Smt. Deubai W/o Yogiraj Navale,  
age 68 years
3. Kalu S/o Yogiraj Navale,  
age 41 years,
4. Nilkanth S/o Yogiraj Navale,  
age 38 years

All agriculturists by occupation and  
R/o Chikalthanwadi Taluka Shrigonda  
Dist. Ahmednagar.

...APPELLANTS

(Original defendants No. 1 to 4)

**VERSUS**

1. Smt. Ranjana Wd/o Ashok Navale  
age 38 yrs occupation household (DIED)
2. Rohit S/o Ashok Navale,  
age 21 years occupation education
3. Sarika D/o Ashok Navale,  
age 16 years occupation education  
through her guardian/mother  
Ranjana Wd/o Ashok Navale

All R/o Madhe Vadgaon Taluka Shrigonda  
Dist. Ahmednagar.

4. Bhagwan S/o Bhanudas Navale,  
age 58 years,
5. Jaysing s/o Bhanudas Navale,  
age 57 years

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6. Dilip s/o Bhanudas Navale,  
age 55 years,
7. Shankar s/o Bhanudas Navale,  
age 53 years,
8. Ankusha s/o Bhanudas Navale,  
age 50 years,
9. Surekha Suresh Suryawanshi,  
age 53 years ,
10. Manohar S/o Bhanudas Navale,  
age 38 years ,
11. Laxmibai Bhanudas Navale,  
age 73 years,

Nos. 5 to 8, 10 and 11 agriculturists by occupation  
and R/o Takali Kalevalit Taluka Shrigonda  
Dist. Ahmednagar

...Respondents  
(Original plaintiffs)

Mr. N.V. Gaware, Advocate for appellants.  
Mr V.S. Bedre, Advocate for respondents No.2 & 3.  
Mr V.S. Badakh, Advocate for respondents No. 4 to 11.

**CORAM : N.W. SAMBRE, J.**

**DATE : 1<sup>st</sup> August, 2017**

**ORAL ORDER**

The appellants/defendants in Regular Civil suit No. 274/2000 suffered a decree for partition and separate possession, vide judgment and decree dated November 25, 2004, which was confirmed in appeal. As such, this Second Appeal.

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2. The ground, that is sought to be raised by the present appellants/defendants in the present Second Appeal is, it is not in dispute that properties at Takli Kadevalit are ancestral and sought to be partitioned. However, the properties situated at Chikalthanwadi bearing Gat Nos. 40 and 68 - old Gat Nos. 409 and 386 are the self acquired properties of the present appellants/defendants. As such, it ought not to have been subjected to partition. A reliance is sought to be placed on sale deeds, which are produced in the present appeal alongwith application under Order XLI Rule 27 of the Civil Procedure Code. It is also brought to the notice of this Court that a specific plea of the self acquired property being property at Chikalthanwadi was very much raised, however, not properly adjudicated upon.

3. Per contra, Shri Bedre, learned Counsel for the respondents/plaintiffs submits that Dhondiba was the *Karta* of the family and it is through joint family income the properties were purchased. He would urge that appellants have failed to discharge burden to prove that properties at Chikalthanwadi are self acquired properties.

4. The appellants filed their written statement at Exh. 62 denying the claim for partition.

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5. Since the appellants have come out with a case that part of the property being located at Chikalthanwadi is self acquired property, the burden is on the appellants to prove the same. The said burden is not discharged by the present appellants either by cross-examining plaintiffs' witnesses or by leading any additional evidence so as to prove the same.

6. Apart from above, fact remains that appellants remained absent after the written statement was filed, and said suit went uncontested against present appellants on the issue of evidence.

7. In view of the fact that appellants have failed to discharge their burden of proving the fact that the suit property was their self acquired property and application under Order XLI Rule 27 is moved in the present appeal. The cause cited for moving such application is appellants are labours and are required to be out of their native village for substantial long time at the time of harvesting sugarcane crop. So far as the said submissions are concerned, in my opinion, the plea of Order XLI Rule 27, which is sought to be canvassed during present hearing of the Second Appeal, is liable to be rejected for the reason that there are no convincing grounds brought before this Court, so as to prompt for invoking provisions of

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Order XLI Rule 27. The only excuse for non-production of the sale deeds is non-availability of the appellants at the place of litigation. The said cause cited is as per the convenience of the appellants/defendants, but have chosen not to appear in the suit after written statement was filed.

8. Apart from above, even if presumed that such sale deeds are taken into account at this stage, it can hardly be inferred from the language therein that said properties were purchased by appellants from their individual income.

9. In view of above, in my opinion, there is no substance in the appeal as same lacks substantial question of law. The appeal is against concurrent findings. The appeal must fail. Hence the appeal is dismissed.

10. In view of dismissal of the Second Appeal, pending Civil Application, if any, does not survive, and same stands disposed of.

**( N.W. SAMBRE, J.)**

pjm