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

**SECOND APPEAL NO.822 OF 2013
WITH
CIVIL APPLICATION NO.12841 OF 2013**

1. Atmaram s/o Yedu Gite,
Age: 72 years, Occu: Agri.,
R/o Andurd, Tq. Bhoom,
Dist. Osmanabad
 2. Kashibai w/o Ajinath Ghule,
Age: 67 years, Occu: Agriculture,
R/o. Ghulewadi, Tq. Patoda,
Dist. Beed, at present Chirule,
Tq. & Dist. Yawatmal
 3. Kaushalyabai w/o Dinkar Darade,
Age: 65 years, Occu: Agriculture,
R/o. Daradwadi, Tq. Jamkhed,
Dist. Ahmednagar
 4. Rukhmanbai w/o Dashrath Darade,
Age: 59 years, Occu: Agri.,
R/o. Rameshwar, Tq. Bhoom,
Dist. Osmanabad
 5. Rahibai w/o Ashruba Jadhavar,
Age: 57 years, Occu: Agri.,
R/o. Wadaji, Tq. Washi,
Dist. Osmanabad, at present
R/o Kusumnagar Bhoom,
Near Maruti Temple, Tq. Bhoom,
Dist. Osmanabad
- ..APPELLANTS
- VERSUS
1. Gopinath s/o Yedu Gite,
Age: 61 years, Occu: Agri.,
R/o. Andurd, Tq. Bhoom,
Dist. Osmanabad
 2. Pandurang s/o Yedu Gite,
Age: 53 years, Occu: Agri.,
R/o. As above
- ..RESPONDENTS

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Mr V. A. Dhakane, Advocate for appellants;
Mr M. A. Thorbole, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 23rd June, 2017

ORAL ORDER

This appeal is by original defendants in Regular Civil Suit No.219 of 2004 for partition and separate possession. The said suit came to be decreed on 22nd November, 2006, by the judgment and order passed by Joint Civil Judge Junior Division, Bhoom, which was subject matter of challenging Regular Civil Appeal No. 226 of 2006. The learned Principal District Judge, Osmanabad, vide judgment and decree dated 25th August, 2011, partly modified the judgment and decree of the Trial Court. Thus, the present second appeal.

2. The appellants have raised an issue of the State amendment to Hindu Succession Act in 1994 and subsequent thereto amendment to Section 5 in 2005.

3. According to him, the aforesaid issue and the evidence is not at all discussed by the lower appellate Court and in a most cryptic manner, the lower appellate Court has confirmed the judgment and decree rendered by the Trial Court.

4. Learned Counsel appearing on behalf of respondents-plaintiffs would invite attention of this Court to the observations made by the lower

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appellate Court at para 10 of the judgment so as to submit that the effect of the State amendment of 1994 to the Hindu Succession Act is rightly appreciated and considered. According to him, though the reasoning part of the lower appellate Court's judgment is not conveniently worded, however, there is substance which could be gathered from the reasoning provided by the lower appellate Court. According to him, the present appeal being against concurrent findings recorded by the Courts below the same be dismissed.

5. Having considered the rival submissions it is required to be noted that the lower appellate Court in most cryptic manner, in three paragraphs has wound up the judgment. The lower appellate Court has neither considered the submissions canvassed by the appellants nor the evidence as was led by the parties before the Court below and how the Trial Court was right in appreciating the evidence and arriving at a conclusion. The judgment, in my opinion, is not in tune with the requirement of judgment of the Apex Court in the matter of **Santosh Hazari Vs. Purushottam Tiwari (dead) by L.Rs**, reported in **AIR 2001 SCW 723**.

6. In view thereof, the judgment and decree dated 25th August, 2011, passed by the Principal District Judge, Osmanabad, in Regular Civil Appeal No.226 of 2006 is not sustainable and accordingly the same is quashed and set aside.

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The matter is remitted back to the Principal District Judge, Osmanabad to decide the same afresh, in accordance with law and having regard to the observations made herein above.

The parties hereto agree that they shall appear before the lower appellate Court on 17th July, 2017 and shall submit their written notes of arguments and shall not seek further adjournment.

The lower appellate Court shall make every endeavour to decide the appeal as expeditiously as possible and in any case within four weeks from 17th July, 2017.

In view of above, pending civil application does not survive and stands disposed of accordingly.

(N.W. SAMBRE, J.)

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