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

**SECOND APPEAL NO. 752 OF 2016
WITH
CIVIL APPLICATION NO.12971 OF 2015**

Vitthal s/o Maroti Pund,
Age: 32 years, Occ: Agri.,
R/o. Salapur, Taluka Kalamnuri,
Dist. Hingoli.

..APPELLANT

VERSUS

1. Gangaram s/o Narayan Pund,
Age: 86 years, Occ: Agri.,
R/o. Kalamnuri, Tq. Kalamnuri,
District Hingoli.

2. Balaji s/o Shriram Pund,
Age: 32 years, Occ: Agri.,
R/o. Salapur, Tq. Kalamnuri,
District Hingoli.

3. Digambar s/o Irbaji Pund,
Age: 32 years, Occ: Agri.,
R/o. Salapur, Tq. Kalamnuri,
District Hingoli.

4. Gajanan s/o Dajiba Pund,
Age: 35 years, Occ: Agri.,
R/o. Salapur, Tq. Kalamnuri,
District Hingoli.

..RESPONDENTS

Mr A.A. Khan, Advocate for appellant;
Mr V.D. Salunke, Advocate for respondent Nos.
1 to 3

CORAM : N.W. SAMBRE, J.

DATE : 28th JUNE, 2017

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ORAL ORDER :

The present appellant and respondent No.4 are defendants in Regular Civil Suit No. 52 of 2004 filed by the respondent Nos.1 to 3 seeking perpetual injunction as respondents claimed that they are in possession of land Gat No. 23 area 2 Hectare 66 Are located at Salapur, Taluka Kalamnuri.

2. The said suit came to be dismissed by judgment and decree dated 31st January, 2008 passed by Civil Judge, Junior Division, Kalamnuri, however, the appeal filed by the respondents being Regular Civil Appeal No. 20 of 2008 came to be allowed by judgment and order dated 11th September, 2014 passed by District Judge-1, Hingoli. As such, this second appeal.

3. Heard Mr. Khan, learned Counsel for the appellant-original defendant. He would take me through the observations made by learned trial Court, particularly issues framed and answer to

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that effect. According to him, *Khasrapatrak* and *Pahanipatrak* of 1996 speaks of possession of present appellant over Survey No. 4A to the extent of 19 Acre 23 Guntha. It is then claimed by him that grand father of appellant Vithal vide sale deed No.1977/66 dated 14th July, 1966 sold 9 Acre 14 Guntha land out of 19 Acre 23 Guntha to Purbhaji and Lalji. It is claimed that defendant remained in possession of 10 Acre 9 Guntha land, which was divided into three parts, of which one to the plaintiff to the extent of 11 Acre 28 Guntha. The grand father of defendant got 10 Acre 9 Guntha and Purbhaji and Lalji got 9 Acre 14 Guntha.

4. It is then claimed that after 1996 said old Survey No.4 was divided into three parts, which was also further divided in two six parts.

5. Mr. Khan, learned Counsel for the appellant-defendant would urge that as regards record prepared by the Consolidation Officer in relation to disputed land having old Survey No.4,

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mutation entry to that effect is subjudice before the Commissioner, Consolidation, Aurangabad, this Court should defer the hearing of the appeal till decision of the said consolidation appeal.

6. Per contra, Mr. Salunke, learned Counsel for the respondents-original plaintiffs would urge that present appellant has not entered into witness box and it is their mother who entered into witness box, who has deposed anything in support of their claim. According to him, source to the property of the plaintiffs is already dealt with by the Courts below and in view of the fact that defendants have come out with plea that they are owners of the property, burden shifts on them to prove the said fact which is not discharged. He prays for dismissal of the appeal.

7. From the judgment of lower appellate Court, it is required to be appreciated that father of present appellant-defendant initially filed suit being Regular Civil Suit No. 134 of 1985 against

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father of respondents-plaintiffs, which was withdrawn simplicitor. The appellant-defendant came out with a case in the suit in question that disputed land bearing Gat No.23 is corresponding with old Survey No. 4 and 1953 revenue in respect of old Survey No. 4 speaks of their possession over the suit property. It is claimed that their grandfather has acquired ownership of the Survey No. 4 area 19 Acres and 23 Gunthas including that of 10 Ana share in the well. It is then claimed that after their grandfather died, they inherited the said property through their father.

8. So far as the suit land is concerned, defendant No. 2 has entered into compromise at Exhibit-36 and he admitted the claim of the plaintiffs in its entirety. As such, original suit of the plaintiffs i.e. respondents herein came to be decreed as against defendant No.2.

9. So far as defendant No.1 i.e. appellant herein is concerned, he neither entered into

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witness box nor tendered evidence in support of his claim. Though he has made his mother to enter into witness box, however, nothing could be brought on record so as to establish the case of the defendant to demonstrate that the defendant has inherited the property in question.

10. Apart from above, it is to be noted that proceedings which are pending before the Consolidation Commissioner, Aurangabad, will have hardly any bearing over the present civil proceedings when the findings arising out of civil proceedings are binding on the revenue authorities qua decided by the civil Court.

11. Lower appellate Court has rightly taken note of the fact that appellant's father filed Regular Civil Suit No. 134 of 1985 for declaration of ownership and perpetual injunction and said suit was simplicitor withdrawn.

12. It is to be noted that transfer from 1996

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till date of filing of the suit out of land bearing Survey No. 4 and 4A has been rightly gone into by lower appellate Court and upon appreciation of evidence of defendant's witness DW-2 Gangabai reached to the finding that the suit of the plaintiff is liable to be decreed.

13. In the aforesaid background, the ground as is sought to be raised so as to pursue this Court to frame substantial question of law appears to be devoid of merit. The second appeal, as such, fails, stands dismissed.

14. Consequently, civil application stands dismissed.

(N.W. SAMBRE, J.)

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