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

**CIVIL APPLICATION NO.13916 OF 2016
IN/WITH
SECOND APPEAL (ST.) NO.28789 OF 2016
WITH
CIVIL APPLICATION NO.16200 OF 2016**

Vithal S/o Gopinath Padmule,
Age : 73 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed
Through G.P.A. Holder
Pandurang S/o Vithal Padmule
Age : 40 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed

..APPLICANT
(Orig. Deft. No.3)

VERSUS

1. Urmila D/o Baburao Padmule,
Age : 50 years, Occ. Labour,
R/o Kolharwadi,
Tq. & Dist. Beed
2. Santram s/o Gopinath Padmule,
Died, L.Rs.
- 2A. Vachistha Santram Padmule,
Age : 30 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed
- 2B. Kondiram Santram Padmule,
Age : 32 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed
3. Prabhu s/o Gopinath Padmule,
Aged : 65 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed
4. Kushaba S/o Manik Padmule,
Age : 50 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed
5. Masurabai Pandurang Padmule,
Age : 60 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed

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6. Namdeo Ashruba Dharme,
Age : 55 years, Occ. Agriculture,
R/o Kolharwadi, Tq. & Dist. Beed
7. Udhav s/o Mahadeo Nirdhar,
Age : 60 years, Occ. Agriculture,
R/o Vaibhatwadi, Tq. & Dist. Beed
8. Rajendra S/o Mahadeo Nirdhar,
Age : 47 years, Occ. Agriculture,
R/o Vaibhatwadi, Tq. & Dist. Beed ..RESPONDENTS
(Resp. Nos. 2 to 8-
Orig. Defts.)

Mr M.R. Andhale, Advocate for applicant;
Mr M.G. Deokate, Advocate for respondent no.1;
Mr S.K. Naikwade, Advocate for respondents no.7 & 8

CORAM : N.W. SAMBRE, J.

DATE : 4th July, 2017

ORAL ORDER

Heard.

2. With consent of the parties, delay caused in preferring Second Appeal stands condoned and appeal is taken out for final disposal at admission stage.

3. Respondent no.1 – original plaintiff Urmila, who is sister of the present appellant – original defendant no.3 filed Regular Civil Suit No.247 of 1991 on 25th June, 1991 for partition and separate possession of the suit property. Amongst other, the *inter se* reliefs claimed are for setting aside the sale deed executed by the defendants and partition of the suit properties. On 21st January, 2006, 2nd Joint Civil Judge Junior Division, Beed decreed the suit of respondent no.1 and declared that the appellant,

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original plaintiff, defendant no.1 Manik, defendant no.4 Prabhu, defendant no.6 Masurabai have $1/6^{\text{th}}$ share each in the suit property and legal representatives of defendant no.2 have $1/12^{\text{th}}$ share in the suit property. The Trial Court also directed to adjust the land which was transferred by plaintiff to defendant no.7 vide sale deed dated 17th October, 1995, which was further sold by defendant no.7 to defendants no.8 and 9 from the share to which the plaintiff was held entitled. The other sale deed executed by the plaintiff in favour of defendant no.7 and further by defendant no.7 in favour of defendants no.8 and 9, sale deed executed by defendant no.1 in favour of one Mohd. Sharif and further in favour of defendant no.5 was also ordered to be cancelled. It is further ordered that the share of defendant no.1, if possible be adjusted to the portion of land sold by him to one Mohd. Sharif.

4. Feeling aggrieved thereby, an appeal was carried to the Court of learned District Judge-1, Beed, who by judgment and decree dated 17th July, 2012 modified the same to the extent of the observation made in clause (5) of the operative order. Thus, the present appeal questioning both the judgments and decrees.

5. Mr Andhale, learned Counsel appearing on behalf of the appellant would strenuously urge that respondent no.1 – original plaintiff got married in 1982 and she orally relinquished her share in favour of other brothers including that of the present appellant and as such, suit for partition is not maintainable. According to him, the relinquishment is out of consideration

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of the amount that was spent on her marriage and settling her in life.

6. He would then urge that the said aspect is not gone into by the Courts below and as such, this Court should interfere.

7. At the outset, it is required to be noted that it was expected of the appellant-defendant no.3 to plead such a statement of fact in his written statement, lead evidence in support thereof to establish the said fact as the shifts on the appellant since he has come out with such a defence.

8. In the backdrop of concurrent findings of both the Courts below what could be visualized from the judgments is, appellant has discharged his burden by establishing the fact that the original plaintiff relinquished her share in favour of the present appellant.

9. For the aforesaid reasons, in my opinion, there is hardly any substance in the appeal. Second Appeal fails and stands dismissed. In view thereof, pending Civil Application/s stand disposed of.

(N.W. SAMBRE, J.)

amj