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

**CIVIL APPLICATION NO.13279 OF 2017
IN/WITH
SECOND APPEAL (ST.) NO.33884 OF 2017**

1. Somnath s/o Uttam Chavan,
Age: 27 years, Occu: Labour

2. Nagnath s/o Uttam Chavan,
Age: 29 years, Occu: Labour,
Both R/o Borgaon-Kale,
Tq. & Dist. Latur

..APPLICANTS

VERSUS

1. Kadappa s/o Gangaram Chavan,
Age: 75 years, Occu: Labour,
R/o Akubai Padoli,
Tq. & Dist. Osmanabad

2. Uttam s/o Gangaram Chavan,
Age: 70 years, Occu: Labour

3. Antram died, through his L.Rs.
Rajabhau Antaram Chavan,
Age: 33 years, Occu: Labour,
Resp. Nos.2 & 3 Both R/o.
Borgaon Kale, Tq. & Dist. Latur

4. Lakuman Manik Shinde,
Age: Major, Occu: Agril.

5. Bhagwan s/o Manik Shinde,
Age: Major, Occu: Agril.

6. Bibhishan Manik Shinde,
Age: Major, Occu: Agril.

7. sow. Kukumar Bhagwan Shinde,
Age: Major, Occu: Household

8. Sow. Chaya Bibhishan Shinde,
Age: Major, Occu: Household,
Nos.4 to 8 All R/o Karkatta,
Tq. & Dist. Latur

..RESPONDENTS

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Mr B. N. Patil, Advocate for applicants/appellants

CORAM : NITIN W. SAMBRE, J.

DATE : 9th November, 2017

ORAL ORDER

By Civil Application No.13273 of 2017, the applicants seek condonation of delay of 5 days caused in preferring Second Appeal. For the reasons stated therein, application stands allowed and delay is condoned. Appeal is taken out for hearing.

2. One Gangaram was common ancestor of Uttam, Kadappa, Santram and Antram. The suit property was mutated in the name of Kadappa, the eldest son of Gangaram. Kadappa from 1977 to 1991, by various sale deeds in favour of defendants no.4 to 8 sold the agricultural land.

3. The present appellants-original plaintiffs filed Regular Civil Suit No.250 of 2009 seeking declaration that the property in question is ancestral property and further partition of the same is sought with possession, as also perpetual injunction. It is also prayed that the property should not have been transferred as there was no legal necessity.

4. The aforesaid suit came to be dismissed vide judgment and decree dated 17th March, 2011, which was confirmed in appeal being Regular Civil Appeal No.384 of 2012, decided on 29th June, 2017. As such, this Second Appeal against concurrent findings.

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5. Heard Mr Patil, learned Counsel appearing on behalf of appellants-plaintiffs. By inviting attention of this Court to the pleadings of the plaintiffs *qua* alienation, that the suit property was the ancestral property of one Gangaram, to whom the property was given by one Maruti Pimpre, was duly admitted by Kadappa, he submits that even defendants no.4 to 8 have admitted in their written statement that the suit property is ancestral property of present plaintiffs, for which the source was from deceased Gangaram. According to him, once evidence to that effect and admission by the defendants has come on record, no finding was called for on the issue, as to whether the suit property is ancestral or not. He would then urge that the sale deeds in respect of the ancestral property executed from 1977 to 1991 by the eldest son of Gangaram, who was acting as manager, were not for legal necessity and as such said sale deeds should have been set aside by ordering partition of the property. He would pray for framing substantial question of law on the aforesaid line.

6. With the assistance of Mr Patil, I have perused judgment rendered by the Trial Court. Learned Trial Court has framed issues, however, has not incorporated the same in the judgment, although it has dealt with each of the issues. While doing so, the Trial Court has taken into account evidence tendered by defendant no.1 Kadappa, who has admitted the claim of the plaintiffs. Defendant no.1 Kadappa has come out with a case that the sale deeds were got executed from him by putting him under influence of liquor. Defendant no.1 has admitted the claim in its entirety.

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7. The fact remains that defendant no.1 has entered into witness box and the source of suit property to defendant no.1 was sought to be established, claiming that it was through one Maruti Pimpre, who was holding more than 200 Acres of land.

8. Defendant no.1, who supported the claim of plaintiffs being their uncle, has in categorical terms admitted that Gangaram was never owner of the property but the property had come to defendant no.1 from earlier owner Pimpre. The said claim was further fortified by evidence of P.W.3 Nana, who was son of said Pimpre. P.W.3 Nana has deposed that Kadappa or Gangaram had no ancestral property and it is his father Maruti Pimpre who has given the property to Kadappa. In the light of evidence of the defendant and P.W.3 Nana, in my opinion, the Courts below were right in concurrently holding that the suit property is not an ancestral property, but it had come to defendant no.1 Kadappa from Maruti Pimpre.

9. Once it is held that the suit property is not ancestral property, the claim of the plaintiffs that they are entitled for setting aside the sale deeds being not for legal necessity, is not required to be ascertained.

10. In that view of the matter, present Second Appeal against concurrent findings recoded by the Courts below lacks any substantial question of law and accordingly stands dismissed.

(NITIN W. SAMBRE, J.)

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