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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.130 OF 2016

Rajendra Babruvahan Mali Mohalkar
Age - 47 years, Occ - Agriculture
R/o Para, Taluka - Vashi,
District - Osmanabad

APPELLANT

VERSUS

Anantha s/o Babruvahan Mali Mohalkar
Age - 40 years, Occ - Agriculture
R/o Para, Taluka - Vashi
District - Osmanabad

RESPONDENT

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Mr. K. S. Solanke h/f Mr. S. J. salunke, Advocate for the appellant
Mr. S. G. Chapalgaonkar, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd MARCH, 2017

ORAL JUDGMENT :

1. Heard learned advocates for the parties.
2. It is defendant's second appeal purporting to challenge decree of declaration and perpetual injunction against him in respect of twelve *anna* share in two hectare land in gut No.51 situated in village Simri Pargaon, Taluka – Majalgaon, passed by Civil Judge, Junior Division, Majalgaon in Regular Civil Suit No.27 of 2003 and confirmed by Ad-hod District Judge-1, Majalgaon in

Regular Civil Appeal No.52 of 2010.

3. After hearing learned advocates, it transpires that the defendant stakes claim to two hectare land purchased by his father in his name, with reference to a sale deed. It appears that the plaintiff and the defendant are step brothers. After death of their father, ancestral / joint family properties were divided between the plaintiff and defendant. Defendant received four *anna* share in gut No.51 whereas the plaintiff received twelve *anna* share in the same. It is being referred to that, in said partition executed on a stamp paper of ₹.10/- after death of father, defendant has also received certain other properties. So is the case of the plaintiff. It does not appear to be a case from the pleadings either that the distribution between the plaintiff and the defendant is claimed to be inequitable. The trial court has recorded extensive evidence adduced on behalf of the plaintiff about execution of document on stamp paper of ₹.10/- about partition of ancestral / joint family properties. Defendant though had declined execution of the document, it has clearly emerged in the evidence that the document had been executed and stood proved. Contention on behalf of the defendant was that the suit property is his self acquired property, however, both the courts have concurred on that the defendant could not

establish said fact by any credible material. The appellate court as well has discussed evidence threadbare on this contention. It has been observed that defendant has not been able to prove self acquisition of the property and the contention about that the consideration had been paid by selling ornaments of mother has not been supported by any evidence at all.

4. Having regard to that two courts hitherto have concurred on appreciation of evidence, which does not appear to be not adhering to the facts and the defendant having failed to establish self acquisition of the property and the document of partition having been proved, there is hardly any case, which can be said to be made out raising substantial question of law.

5. Second appeal, as such, fails and is dismissed.

6. In view of aforesaid, Civil Application No.2014 of 2016 also stands disposed of.

[SUNIL P. DESHMUKH, J.]