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

**SECOND APPEAL NO.422 OF 2017
WITH
CIVIL APPLICATION NO.8203 OF 2017**

Narayan s/o Shankar Chaudhari,
Age: 61 years, Occu: Retd. & Agri.,
R/o Sakri, Tq. Bhusawal,
Dist. Jalgaon

..APPELLANT
(Orig.Plaintiff)

VERSUS

1. Shankar s/o Chapu Chaudhari (Deceased),
through his L.Rs.
- 1(a) Mandabai d/o Shankar Chaudhari
@ Mandabai Rajendra Bondar,
Age: 28 years, Occu: Household,
R/o Sakri, Tal. Bhusawal,
Dist. Jalgaon
- 1(b) Padmabai d/o Shankar Choudhari,
Age: 24 years, Occu: Household,
R/o. Sakri, Tal. Bhusawal,
Dist. Jalgaon
- 1(c) Kesharbai Mohansingh Mahajan,
Age: 42 years, Occu: Household,
R/o. Daud, Tal. Daud, Dist. Panchamal,
Railway House No. 345-C, Dhobighat,
Gujarat State
2. Meerabai Shankar Chadhari (Deceased)
3. Premsingh Shankar Chaudhari (Deceased),
through legal heirs:-
- 3(a) Vimalbai w/o Premsingh Chaudhari,
Age: 45 years, Occu: Household
- 3(b) Rahul Premsingh Chaudhari,
Age: 19 years, Occu: Education,
Nos. 3(a) & 3(b) R/o. Kandari,
Tal. Bhusawal, Dist. Jalgaon

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- 3(c) Sau. Vaishali Ganesh Patil,
Age: 23 years, Occu: Household
- 3(d) Sau. Jyoti Mukesh Patil,
Age: 21 years, Occu: Household,
3(c) and 3(d) R/o Shirpur-Kanhale,
Tal. Bhusawal, Dist. Jalgaon
4. Namdeo Shankar Chaudhari,
Age: 40 years, Occu: Commission Agent,
R/o Kandari, Taluka Bhusawal
5. Hirasingh Shankar Choudhari,
Age: 38 years, Occu: Vegetable seller,
R/o Kandari, Taluka Bhusawal
6. Tapiram Shankar Chaudhari,
Age: 52 years, Occu: Service,
R/o. Sakri-phata, Taluka Bhusawal
7. Pramod Vasudeo Dhande,
Age: 40 years, Occu: Broker,
R/o. Gajanan Nagar, Near Tapi Nagar,
Bhusawal
8. Kamalbai Pundalik Mahajan,
Age: 53 years, Occu: Broker,
R/o near Tute Tent House
Kulkarni plot, Bhusawal

..RESPONDENT
(Orig. Defts.)

Mr A. M. Gholap, Advocate for appellant;
Mr P. B. Gamot, Advocate for respondent Nos. 1 to 7

CORAM : N.W. SAMBRE, J.

DATE : 23rd June, 2017

ORAL ORDER

Heard.

2. The appellant-original plaintiff initiated Regular Civil Suit No.62 of 1989 for partition, possession and perpetual injunction.

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3. The aforesaid suit came to be decreed by judgment and order dated 24th November, 2003, passed by 3rd Joint Civil Judge Junior Division, Bhusawal, wherein it is ordered that the plaintiff and defendants no.2 to 6 and 1 (a) to 1 (c) are entitled for 1/9th share in 95 R land in Gat No.145/1 out of 1 Hectare and 89 R and in house property bearing No.431, situated at Kandari. The Trial Court also granted perpetual injunction as prayed.

4. The present appellant, feeling aggrieved, preferred Regular Civil Appeal No.19 of 2014 (old Regular Civil Appeal No.272 of 2004) before the learned District Judge-2, Bhusawal, who partly allowed the appeal, set aside judgment and decree passed in Regular Civil Suit No.62 of 1989 and declared that plaintiff, defendant Nos.3 (a) to 3 (d) jointly, defendant Nos. 4, 5 and 6 each will have 45/252 th share in eight anas share of land bearing Gat No. 145/1 at Kandari, House No.431 at Kandari. Defendant Nos.1-(a) to 1-(c) are further declared to have 9/252 th share each in eight anas share in Gat No.145/1 of Kandari and House No.431 at Kandari. It is further declared that plaintiff, defendant Nos. 1-(a), 1-(b), 1-(c), 4, 5, 6 each and defendant Nos. 3 (a) to 3 (d) jointly will have 1/8 th share in House No.418.

5. As the entire property of which partition was sought was not granted, feeling aggrieved by the aforesaid judgment and decree dated 7th September, 2015, the present second appeal.

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6. Mr Gholap, learned Counsel appearing on behalf of the appellant would invite attention of this Court to the issues framed by the learned Trial Court, particularly issue No.2 which reads thus:-

“Whether the defendants no. 1A, 1B and 2 to 6 have proved that the defendant no. 1 sold out the gat no. 134/2 of joint family property to defendants no.7 and 8 out of legal necessity?”

The said issue was answered in favour of the present appellant -plaintiff and as such, no partition of the said property was ordered is one of the issues which is sought to be agitated by Mr Gholap along with seeking partition of the suit property, which is termed as property mentioned at 1(c) and also the aforesaid property which is mentioned at 1(b) in the plaint.

7. After having tried to pursue this Court to make out a case for grant of partition in relation to property mentioned at 1(c), I hardly see any reason to interfere at the behest of the present appellant to the extent of said property, particularly mentioned in paragraph 1 of the plaint.

8. So far as property mentioned at Sr.No.1(b) of the plaint is concerned, admittedly, it was purchased by original defendant Nos. 7 and 8.

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9. The appellant and defendant Nos.7 and 8 have entered into a settlement and have tendered a settlement deed to that effect before this Court which is signed by respective parties i.e. appellant and defendant Nos.7 and 8. The appellant further agrees that the sale of said property by original defendant Nos.1 to 8 was out of legal necessity and is giving up his claim for agitating the said issue that the sale was not for legal necessity.

10. Defendant Nos. 7 and 8 out of the property mentioned at Sr.No.1(b) have carved out certain plots and it is agreed between them that plot Nos.7, 8 and 9 will be transferred to the present appellant by executing sale deed, out of the property which was purchased by them. The terms to that effect are stated in vernacular and are agreed by the appellant and original defendant Nos.7 and 8, who are present before this Court.

11. In the aforesaid background, Mr Gholap, learned Counsel appearing on behalf of the appellant has consented for withdrawal of the claim and accept the judgment of the Trial Court and the lower appellate Court in toto. So far as issue of settlement is concerned, let there be a decree to the extent of property which is more particularly described in paragraph 1(b) of the plaint in terms as has been narrated in the settlement deed placed on record which is sworn by the parties on 19th June, 2017.

12. The second appeal, as such, stands disposed of.

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13. In view of disposal of second appeal, pending civil application does not survive and stands disposed of.

(N.W. SAMBRE, J.)

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