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

**SECOND APPEAL NO.358 OF 2015
WITH
CIVIL APPLICATION NO.16614 OF 2016**

1. Bhausahab Vitthal Tapkire,
Age: 58 years, Occu: Agril.,
R/o. Walki,
Taluka & District Ahmednagar

2. Dadabhau Vitthal Tapkire,
Age: 62 years, Occu: Pensioner,
R/o. Dattwadi, Akurdi,
Uttam Maruti Kute Chawl,
Pune-35

..APPELLANTS
(Orig.deffts.)

VERSUS

Vasant Vitthal Tapkire,
Age: 53 years, Occu: Business,
R/o. Chikhali, Patilnagar,
Taluka Haveli, Dist. Pune

..RESPONDENT
(Orig.pltff.)

Mr Santosh S. Jadhavar, Advocate for appellants;
Mr N. B. Narwade, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd November, 2017

ORAL ORDER

Heard learned Counsel for appellants – original defendants. In Regular Civil Suit No.300 of 2010, respondent – original plaintiff Vasant filed suit for partition before learned 4th Joint Civil Judge Senior Division, Ahmednagar, which came to be decreed on 29th August, 2012, against which

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an appeal, being Regular Civil Appeal No.575 of 2012 was carried before the learned Ad Hoc District Judge-3, Ahmednagar, which came to be dismissed on 26th November, 2014. As such, this second appeal.

2. The learned Counsel appearing on behalf of the appellants would urge that the judgments and decrees of the Courts below are required to be interfered in view of the fact that it was established by the appellants by filing their written statement at Exh.13 and by adducing oral evidence that suit properties were purchased by them, particularly by defendant No.1 from his individual income. He would submit that both the Courts below have incorrectly answered the issue framed to that effect by improper appreciation of the evidence.

3. Per contra, learned Counsel appearing on behalf of respondent would support the judgments of the Courts below and submit that the appellants have failed to establish the case that the suit properties were purchased from the individual income of defendant No.1. According to him, the burden was not discharged by the appellants-defendants and appeal being against the concurrent findings, is liable to be dismissed.

4. In view of the respective pleadings raised by the parties, the Trial Court framed issue as to whether the plaintiff has proved that suit properties were purchased by him and defendants jointly and answered the same in

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affirmative against appellants. In support of such findings, the lower Court has considered that all the parties to the suit were residing at Pune and the plaintiff was in some business, whereas defendants were gainfully employed.

5. It is not the case of either of the parties that suit properties are ancestral properties, but the fact remains that all the suit properties were purchased in the joint name of plaintiff and defendants.

6. That being so, if the present appellants have come out with a case that it is the appellants, who have paid entire amount towards consideration of the suit properties, it was expected of them to prove same by leading cogent evidence in the form of documentary and oral.

7. The appellants have failed to establish that the entire suit property was purchased from their individual income as is apparent from the observations made by both the Courts below.

8. Apart from above, if the pleadings of appellants are accepted that the appellants have purchased properties in the name of respondent-plaintiff, the provisions of the Benami Transactions (Prohibition) Act, 1988 will come in play and will operate against them.

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9. The appellate Court re-appreciated the entire evidence and noticed that the pleading as is sought to be put forth by the appellants was not proved beyond the doubt as is apparent from issue No.1 framed to that effect. The appellate Court considered the independent source of income of each of the parties and as such, observed that no case for interference in the appellate jurisdiction is made out.

10. In the backdrop of above, there is no substance in present second appeal, which is against concurrent findings. As such, second appeal fails and stands dismissed.

11. In view of dismissal of second appeal, Civil Application No.16614 of 2016 does not survive and stands disposed of.

(NITIN W. SAMBRE, J.)

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