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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION***

SECOND APPEAL NO.250 OF 2015
WITH
CIVIL APPLICATION NO.548 OF 2015

Lalasaheb Sahmrao Patil ..Appellant.

V/s.

Santajirao Shamrao Patil & Ors. ..Respondents.

Mr.Ashutosh Kulkarni for the Appellant & Appellant.

Mr.Ashish Pawar i/b. Manoj Patil for Respondent No.1.

Coram : N.M.Jamdar, J.

Date : 3 April 2017

ORAL ORDER

Heard the learned counsel for the parties.

2. The Appellant has challenged the order dated 29 December 2014 passed by the learned District Judge, Islampur in Regular Civil Appeal No. 10/2008 dismissing the appeal filed by the Appellant. The appeal has been dismissed on the ground that it is not maintainable.

3. The Appellant is the original Defendant No.1. The Respondents-Plaintiffs filed Special Civil Suit No.303/1990 in the Court of Civil Judge, Senior Division, Sangli for partition and separate possession of the suit properties. The learned Civil Judge by the Judgment and Order dated 28 April 1995 dismissed the suit. Regular Civil Appeal No.68/2000 was filed by the Respondents. The learned District Judge held that the status of the parties was not in dispute, the factum of the earlier partition was not proved and accordingly directed that the parties will have respective shares in the suit properties. As regards the findings of the learned Civil Judge that the Respondents-Plaintiffs had failed to include the house property in the common hotch potch, the learned District Judge held that instead of dismissing the suit on this count, the learned Civil Judge ought to have directed the Respondents-Plaintiffs to include the said property in the common hotch potch. Accordingly, by the Judgment and Order dated 15 September 2004, while allowing the appeal, the learned District Judge directed the Respondents-Plaintiffs to submit an application for amendment to the Plaint to the Civil Judge to incorporate the house property. Second Appeal No.124 of 2005 filed by one of the Respondent challenging the Judgment and Order dated 15 September 2004, was dismissed on 6 July 2005. Pursuant to the order passed on 15 September 2004, the Respondents-Plaintiffs made an application for amendment to include the house property. The amendment was granted and by the decree dated 31 December 2007, the learned Civil Judge decreed the suit also in

respect of the properties. As against this order, Regular Civil Appeal No.10 of 2008 was filed by the Appellant, which has been dismissed by the impugned order.

4. Though the learned counsel for the Appellant has sought to urge various grounds, what needs to be noted is that by the Judgment and Order dated 15 September 2004, the appeal was allowed and this order is confirmed in Second Appeal, the directions to amend the Plaint was only a clerical directions having found that the house property needed to be included in the property. It is pursuant to this direction that the learned Civil Judge passed an order dated 31 December 2007. The order dated 31 December, 2007 cannot be considered as a decree, as the learned Civil Judge had only given effect to the directions of the learned District Judge to carry out amendment. The learned District Judge was, therefore, right in holding that Regular Civil Appeal No.10/2008 was not maintainable. As stated earlier, the challenge to the Judgment and Order dated 15 September 2004, stands concluded.AA

5. The learned counsel for the Appellant then submitted that since the house property has not been properly described, it will give rise to difficulties at the time of execution of the decree. If there is really an error in the description of the house property because of which the decree cannot be effectively executed, then the Appellant has remedies open in law. No question of law arise for consideration

in this Second Appeal. The Second Appeal is accordingly dismissed. In view of the dismissal of the Second Appeal, the Civil Application also stands dismissed.

(N.M.Jamdar, J.)