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

**SECOND APPEAL NO. 520 OF 2016
WITH
CIVIL APPLICATION NO. 1054 OF 2016
IN
SECOND APPEAL NO.520 OF 2016**

Nagesh Vishnu Sawant & Ors. ...Appellants.
vs
Babaji Soma Sawant ...Respondent.

.....
Ms Archana K. Shirsekar for the Appellants
None for the Respondent

.....
**CORAM : N.M.JAMDAR, J.
APRIL 25, 2017**

P.C. :

Regular Civil Suit No.44 of 2000 was filed by Respondent No.1 for declaration, perpetual injunction and partition of 1/3rd share in the suit property. The suit property is situated at village Tamboli, Taluka Sindhudurg which is an agricultural land. Respondent No.1 filed a suit on the basis of sale-deed dated 12th February, 1981. According to Respondent No.1 he had purchased 1/3rd share in the suit property from original owner Shivram Sawant.

2 The Appellants/ Defendants filed their Written Statement contending that there was no partition and the shares were not demarcated.

3 Learned Civil Judge, Sawantwadi, by the Judgment and Order dated 2nd March 2012, partly decreed the suit. The learned Civil Judge, refused the prayer of Respondent No.1 for injunction, however the declaration that Respondent No.1 had 1/3rd share in the suit property was granted, the preliminary decree for execution was sent to the District Collector for partition of 1/3rd share. Regular Civil Appeal No. 47 of 2012, filed by the Appellants in the District Court, Sindhudurg was dismissed by the learned District Judge, Sindhudurg by its Judgment and Order dated 11th December, 2015.

4 Learned Counsel for the Appellants reiterated the contentions raised in the Courts below i.e. that unless there being partition and demarcation of shares, the sale-deed could not have been executed in favour of Respondent No.1.

5 That there is a sale-deed in favour of Respondent No.1 by Shivram Sawant, is not disputed and cannot be disputed. It is also an admitted position that Shivram Sawant had 1/3rd share in the suit property. Both the Courts had negated the case of Respondent No.1 regarding injunction, however has only recognized the right of the respondent purchaser to enforce partition. The sale-deed as on date is not set aside and all that both the Courts have done is uphold the right of the Respondent No.1. Both the Courts have, therefore, only declared that Respondent No.1 has stepped into the shoes of Shivram Sawant and as thereafter directed that division be made by metes and bounds. There is no error in the view taken by both the Courts. No

question of law arises. The Second Appeal is accordingly dismissed. In view of dismissal of Appeal, nothing survives in the Civil Application and the same is disposed of accordingly.

(N. M. JAMDAR, J.)