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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******SECOND APPEAL NO.370 OF 2016***

Kondaji Bhivaji Londhe (since deceased)
through LRs

..Appellants.

V/s.

Shahaji Bhivaji Londhe (since deceased)
through LRs. & Ors.

..Respondents.

Mr.Dilip Bodake for the Appellant.

Mr.S.M.Kamble for Respondent Nos.1 B to 1 C and 2.

Coram : N.M.Jamdar, J.

Date : 3 April 2017

ORAL ORDER

Heard the learned counsel for the parties. The Appellants have challenged Judgment and Order dated 27 August 2013 passed by the learned District Judge, Nashik in Regular Civil Appeal No.214/2009 to the effect that the learned District Judge has held that land Gat No.18 situated at Kahandalwadi, Taluka Sinnar, District Nashik, is the self acquired property of Respondent No.1 / Defendant No.1.

2. The Appellants are the legal heirs of the original Plaintiff. The Appellants filed Regular Civil Suit No.63/2000 in the Court of Civil Judge, Junior Division, Sinnar, District Nashik for partition and separate possession of Gat No.27, Gat No.65 and Gat No.18 situated at Kahandalwadi, Taluka Sinnar, District Nashik and also partition of Grampanchayat House bearing No.23/1. The learned Civil Judge by the Judgment and Order dated 21 August 2009 held that all the properties i.e. Gat No.27, Gat No.65 and Gat No.18 and the house property are joint family property and declared that the Plaintiffs and Defendant No.1 have 1/2 share in the suit properties. The Respondents filed Regular Civil Appeal No.214/2009 in the District Court, Nashik. The learned District Judge, by the impugned Judgment and Order dated 27 August 2013 held that the Gat No.27 and Gat No.65 are joint family properties and Gat No.18 is the self acquired property of Defendant No.1.

3. The learned counsel for the Appellants submitted that it was for Respondent No.1-Defendant No.1 to demonstrate that the property was purchased by the Defendant No.1 from his own earnings. He submitted that even the Plaintiff had independent source of income and considering the fact that other properties were joint family properties, the learned District Judge was in error to hold that Gat No.18 was purchased by Defendant No.1 and that it was his self acquired property.

4. The sale deed dated 27 May 1987 by which Defendant No.1 had purchased the property Gat No.18, is on record. The property is standing in the name of Defendant No.1 have purchased it vide a sale deed. The question that arises is, whether the conclusion of the learned District Judge that Gat No.18 was self acquired property of Defendant No.1, is perverse or otherwise. From the title of the suit it appears that at the time of purchase of the property on 27 May 1987, the Defendant No.1 was around 42 to 43 years old. In the cross-examination, the Appellants have admitted that Defendant No.1 was working in Mumbai in the Police Department. He was managing his own affairs. If this position is accepted the independent source of income of Defendant No.1 is established. On the basis of the position admitted by the Appellants alone, the finding of fact that Defendant No.1 has independent source of income and he has purchased the suit property by a sale deed becomes a possible view of the matter. It is not possible to re-appreciate the evidence unless the appreciation of evidence by the first Appellate Court / District Court is perverse. The finding recorded by the learned District Judge on the basis of the admitted position cannot be stated to be perverse. The challenge of the Appellant in respect of Gat No.18 cannot be sustained. No question of law arises in this second appeal. The Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)