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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.230 OF 2014

Kundlik Haribhav Satav

..Appellant.

V/s.

Dattu Haribhau Satav (since deceased)

through LRs. & Ors.

..Respondents.

Mr.Abhijeet Kulkarni and Mr.Manoj Badgujar for the Appellant.

Mr.Mahesh Rawool i/b. A.B.Avhad for Respondent Nos.1 A, 3, 4, 11 to 13.

Coram : N.M.Jamdar, J.

Date : 5 April 2017

ORAL ORDER

Heard the learned counsel for the Appellant. The Appellant has challenged the concurrent Judgments and Orders passed by the learned Civil Judge, J.D. Daund in Regular Civil Suit No.62/1999 decided on 13 September 2004 and the learned District Judge, Baramati in Regular Civil Appeal No.130/2004 decided on 28 August 2012 dismissing the suit and the appeal filed by the Appellant.

2. The Appellant-Plaintiff filed Regular Civil Suit

No.62/1999 in the Court of the Civil Judge, J.D. Daund for partition and separate possession in respect of the properties mentioned in the schedule. The learned Civil Judge dismissed the suit and in the appeal the same was confirmed. Both the Courts have held that the Appellant deliberately did not bring Gat No.94 in the common hotch potch and did not join the necessary parties.

3. The learned counsel for the Appellant submitted that Gat No.357/1, 357/8 are admittedly joint family properties and merely because Gat No.94 is not included, right of the Appellant in the share in this property could not have been negated.

4. Non inclusion of Gat No.94 is not an innocuous mistake. The learned Trial Judge had rendered a finding that Gat No.94 was deliberately not included and the purchasers were not joined. In view of this finding, the Appellant could have taken necessary steps in the first appeal which were not taken and the appeal was dismissed. If the Appellant had deliberately kept away one of the property from the partition having taken benefit from the same, there was no error of view taken by both the Courts that on the basis of such suit, partition of other joint family properties could not have been sought. The learned counsel submitted that necessary amendment could be permitted in the second appeal. The Second Appeal has been filed in the year 2013, after condoning the delay. The appeal is pending and is being adjourned from the year 2014. In

the year 2017, such oral request of amendment casually made across at the end of the arguments cannot be accepted. The appeal is devoid of any merits. The Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)