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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******SECOND APPEAL NO.173 OF 2015***

Smt. Chandrabhaga Sukdeo Ghuge & Ors. ..Appellants.

V/s.

Shantabai Dattu Ghuge & Ors. ..Respondents.

Mr.A.B.Tajane for the Appellants.

Coram : N.M.Jamdar, J.

Date : 10 April 2017

ORAL ORDER

Heard the learned counsel for the Appellants. It is informed that Appellant No.1 has expired. His heirs Appellant Nos.2 to 8 are already on record. In view of the praecipe and death certificate placed on record, leave is granted to the learned counsel for the Appellants to delete the name of Applicant No.1. Amendment be carried out forthwith.

2. A suit was instituted bearing Regular Civil Suit No.809/2003 in respect of the joint family properties for partition. The suit was decreed. The said Judgment and Order was challenged and the decree was confirmed by the learned District Judge. A Final Decree Application No.10/2001 was filed to the Collector for effecting

partition. The Collector took steps pursuant to the final decree. The present suit bearing Regular Civil Suit No.420/2003 was filed by the Appellants challenging the partition effected by the Collector and cancellation of the possession. Both the Courts have held that such a suit is not maintainable and that the Appellants has adequate remedy to pursue the challenge to the steps taken by the Collector under the relevant enactment.

3. Considering the stage at which the proceedings are and that the decree in Regular Civil Suit No.809/2003 has already been confirmed by this Court, the present suit is just an attempt to stall the final allotment of shares. The grounds on which a civil suit is maintainable to set aside a decree which stands confirmed, are limited, such as fraud, etc. From the documents and the averments made in the plaint, no such ground is made out. As regards the grievance of the Appellants in respect of the steps taken by the Collector, as pointed out by both the Courts, adequate remedy is available to the Appellants. In the circumstances, no question of law arises. The Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)