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

**SECOND APPEAL NO.569 OF 2016
WITH
CIVIL APPLICATION NO.1010 OF 2016
IN
SECOND APPEAL NO.569 OF 2016**

Harun Abdulgani Attar and anr V/s. Smt. Jaitunbai Rasul Attar and ors		Appellants. Respondents
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Mr. Prajakt M. Arjunwadkar, for the appellants.
Mr. Tejpal S. Ingale with Mr. Nikhil Pawar, for
respondent Nos. 1 to 3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellants and respondents.

2] This Second Appeal is preferred against the common judgment and decree dated 18.5.2016, passed by District Judge-1, Ichalkaranji, in Regular Civil Appeal Nos.58 of 2010 and 59 of 2010. Both these appeals were preferred by the appellants against the judgment and decree dated 31st August, 2010, passed by Civil Judge Junior Division, Ichalkarani, in Regular Civil Suit No.63 of 2004.

3] The said suit was filed by the respondents herein for

getting vacant possession of the suit premises, on the count that possession of the appellants therein is gratuitous and therefore appellants should vacate and hand over possession of the suit premises to the respondents, as they are the owners thereof.

4] This suit was resisted by the appellants herein contending inter alia that respondent No.1's husband Rasul Nabi Attar and appellant No.1's father Abdulgani Nabi Attar, were real brothers. The property was purchased by them jointly from their joint income. As Rasul was elder and educated between them, sale deeds were executed in his name. However, the appellants are having equal share therein. Therefore, the appellants are entitled to get partition and separate possession of their $\frac{1}{2}$ share in the suit property. The Counter Claim to that effect was also filed by the appellants.

5] The trial Court was, on appreciation of the evidence, pleased to decree the suit and dismiss the Counter Claim.

6] In both the two appeals filed by the appellants, against the said common judgment, the first Appellate Court has confirmed the trial Court's judgment and decree.

7] While challenging the said judgment and decree, the submission of learned counsel for the appellants is that the burden was upon the respondents to prove that both the suit properties were purchased by Rasul from his self earning. However, respondents have

not produced on record, any evidence to that effect. Conversely, the appellants have examined one witness, who has stated that the suit properties were purchased jointly by Rasul and Abdulgani from their joint income. It is submitted that Abdulgani was working with one weaver by name Bidkar and having his independent income. Therefore, it is submitted that both the trial Court and the Appellate Court, have not appreciated the evidence on record properly and not considered the fact that while both the brothers were in joint family, they have purchased the suit properties jointly. Hence, there is substantial question of law raised in this appeal about the nature of the suit property, "Whether it is self acquired or joint family property?", which needs consideration.

8] However, it has to be stated that both the trial Court and Appellate Court, have on appreciation of evidence on record in it's proper perspective, held that as the sale deeds of both the suit properties stand in the name of Rasul, the burden was upon the appellants to prove that the suit properties were purchased from the income of both the brothers. Even accepting that Rasul was elder member of the family, hence, sale deeds were executed in his favour, for joint family, in that case also, the burden was upon the appellants to prove that Abdulgani had contributed some amount for the purchase of the said property.

9] With reference to evidence of witness for appellants, there is only a vague and a general statement that property was purchased from the income of both the brothers. However, what was contribution of Abdulgani for purchase of the suit property is not at all on record. It is also brought on record that both the properties, after the death of Rasul, were transferred in the name of respondent. Thus, it is clear that the suit properties were self acquired properties of Rasul. Hence appellants cannot claim any share therein. Their possession being of a gratuitous licensee, the Courts below have rightly decreed the respondents' suit for possession and dismissed the appellants' Counter Claim for partition.

10] In such circumstances, there is no substantial question of law raised in this Second Appeal.

11] The Second Appeal, therefore, stands dismissed.

12] In view of dismissal of Appeal itself, Civil Application No.1010 of 2016,becomes infructuous and the same is disposed off accordingly.

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[DR.SHALINI PHANSALKAR-JOSHI, J.]