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

***SECOND APPEAL NO. 663 OF 2015
with
CIVIL APPLICATION NO. 1485 OF 2013***

Mr. Jaiwant Vasant Vichare & Ors. ... Appellants/Applicants.

V/s.

Mr. Shankar Dattaram Surve (Deceased)
through L.Rs. ... Respondents.

Mr. A.S. Rao for the Appellants/Applicants.

Mr. Vijay S. Gharat for Respondent 2.

CORAM : N.M. Jamdar, J.

DATE : 17 January, 2018.

Oral Order :-

The Appellants – Plaintiffs have challenged the judgment and order passed by the learned Civil Judge, Junior Division, Sawantwadi dated 12 November 2002 in Regular Civil Suit No. 67 of 1998 and judgment and order passed by the Principal District Judge, Sindhudurg, Oras dated 9 May 2013 in Regular Civil Appeal No. 10 of 2003.

2. The Appellants – Plaintiffs filed a suit for recovery of possession of the suit property, Municipal House No. E-105 situated at Sawantwadi from the Respondents, claiming to be owner thereof. The learned Civil Judge dismissed the suit holding that the Appellants have no connection with the sale deed dated 9 July 1910 upon which reliance was sought to be placed and dismissed the suit. The Appellants relied on a partition deed of 21 January 1964. According to the Appellants by this partition deed, the Appellants had become owners under the sale deed dated 9 July 1910.

3. Heard the learned Counsel for the parties.

4. It is the contention of the learned Counsel for the Appellants that though the original partition deed was not produced, the certified copy is produced, it should have been treated as secondary evidence. The learned District Judge has discussed the aspect of partition deed in *extensio*. This deed was in Modi script. Translation was placed on record. The learned District Judge found that the original partition deed was not produced and that the witness examined in respect of the partition deed could not depose as regard the contents of the deed. The learned District Judge observed that the witness, who had deposed was born in the year 1947 and the sale deed was of the year 1910 and the partition deed of the year 1964 and therefore, the evidence of this witness to trace the title of the Appellants was not sufficient.

5. The Defendants have constructed house in the suit property and it is an established position that they are in possession of the suit property for many years and the Municipal records are in their name. In these circumstances, it was incumbent on the Appellants to prove their ownership rights by leading cogent evidence. The learned Counsel for the Respondents pointed out that the Appellants have not established the genealogy.

6. After considering the evidence on record, the learned District Judge recorded a finding that even assuming the documents are proved, the contents thereof were not proved and therefore, the claim of the Appellants as owner cannot be accepted. There is no perversity in appreciation of evidence, neither any question of law arises. The Second Appeal is dismissed. The Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)