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

**SECOND APPEAL NO. 281 OF 2016**

Damu Shankar Patole & anr. ..Appellants

vs.

Suresh Wamanrao Gaikwad & ors. ..Respondents

....

Shri G.R. Agarwal for appellants.

Shri G.S. Godbole a/w. Akshay Petkar I/b. Ms. Ulka Saranjame  
for respondent No.1.

....

**CORAM : M.S.KARNIK, J.**

**DATE : 11<sup>th</sup> JUNE, 2019**

**P.C. :**

The appellants are the original plaintiffs. They have filed a suit for partition and separate possession and injunction in respect of the immovable property which is subject matter of Regular Civil Suit No. 194 of 2001. In so far as Regular Civil Suit No. 194 of 2001 is concerned, it pertains to suit property 1A bearing Survey no. 45/2 admeasuring 58 R situated at Deolali Village, Nashik. The respondent No.2 (original defendant No.2) is the brother and respondent Nos.4, 5 and 6 (original defendant

Nos. 4, 5 and 6 are sisters of the appellants. The respondent No.3 is their mother.

2. It appears that there was a Development Agreement dated 13/11/1998. It was executed by appellant No.1 (original plaintiff No.1) - Damu (along with his legal heirs) and the legal heirs of respondent No. 2 (original defendant No.2) Hari in favour of defendant No.1 - Suresh in respect of the suit property mentioned herein before. The trial Court was pleased to dismiss Regular Civil Suit No. 194 of 2001. In Regular Civil Suit No. 194 of 2001 the plaintiffs contended that defendant No.1 by deceiving them got executed Power of Attorney and Development Agreement dated 13/11/1998 in respect of the suit property in his favour and that the said Development Agreement is without any consideration. Both the Courts below concurrently found that the Development Agreement was in fact executed by the plaintiff No.1 - Damu in favour of defendant NO.1 in respect of the suit property bearing Survey no. 45/2 admeasuring 58 R. The Courts below have held that the

plaintiffs have failed to show the Development Agreements and General Power of Attorney Exhibits 99 to 102 are duly cancelled by the executants. Based on the materials on record and after appreciating the evidence on record the Courts below recorded this finding of fact.

3. It is also the contention of the appellants that the Development Agreement dated 13/11/1998 executed by the appellants and heirs of original defendant No.2 in favour of the present respondent No.1 - original defendant No.1 – Suresh Wamanrao Gaikwad in respect of the suit property bearing No. 86/2, admeasuring 19666 sq.mtrs. is obtained by fraud. I have gone through the findings of the Courts below and see no reason to interfere with the same.

4. There is no reason to interfere with the concurrent findings recorded by the Courts below. I do not find any substantial question of law involved in this Appeal. The Second Appeal is accordingly dismissed.

**(M.S.KARNIK, J.)**