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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.8465 OF 2018**

Shri Irfan S. Abdul Rehman Foujdar
Through
Attorney Holder
Hazi Shamsuddin Nooruddin and Ors.

..... Appellants.

V/s

Shri Mushtaque Rafique Ahmed Mirajkar
and Others

..... Respondents.

Mr. Vilas B. Tapkir for the Appellants.
None for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 21, 2020

P.C.:-

1] Unsuccessful Defendants, in a suit for partition and separate possession being Special Civil Suit No. 3 of 1983 decreed on 23/08/2006 which was confirmed up to High Court in second appeal, have moved this Court for setting aside decree on the ground of same being obtained by practicing fraud.

2] Application under Order VII Rule 11 of Civil Procedure Code for rejection of the Plaint came to be moved by decree holder-Respondent

No.2 which is allowed by order dated 2/12/2014 and confirmed in Regular Civil Appeal No.133 of 2015. As such, this second appeal.

3] The question of law which is sought to be agitated is, “when partition decree once affirmed on merit upto High Court in Second Appeal, whether the court below is justified in rejecting the Plaint under Order VII Rule 11 of Civil Procedure Code?

4] I have appreciated the submissions of the Appellants in the backdrop of there being partition decree which is affirmed by this Court at the behest of the Appellants in second appeal. In the aforesaid backdrop, Courts below have rightly invoked provisions of Order VII Rule 11(a) and (d) against the Appellants, thereby directing return of plaint for non-disclosure of cause of action.

5] Suit for partition in which decree is suffered by the Appellants is based on cause of action which was resisted by the Appellants. Appellants suffered decree on merit which has attained finality even before this Court in second appeal. As such, courts below have rightly held that cause of action had not been spelt out, so as to make the suit

maintainable. As such, second appeal fails being devoid of merits and same stands dismissed.

(NITIN W. SAMBRE, J.)