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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.536 OF 2018
ALONGWITH
CIVIL APPLICATION NO.1234 OF 2018
IN
SECOND APPEAL NO.536 OF 2018**

Shantabai Hiraji Patil (Since deceased)
Through LRs and Anr.

..... Appellants.

V/s

Shri Hiraji Shankar Patil (Since deceased)
through his legal heirs
1/1 Smt. Janabai Hiraji Patil & Ors.

..... Respondents.

Mr. C.G. Gavnekar for the Appellants.

Mr. Harshad M. Inamdar i/b Mr. Yogesh Dandekar for Respondent
No.1.

Mr. Suhas S. Deokar for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 21, 2020

P.C.:-

1] This second appeal by original Defendants is against concurrent findings. Both the parties are claiming their respective title to the suit property consisting of plot No.29 which was claimed to have been allotted vide order dated 9/3/1964-Exhibit-160 by the revenue

authorities by carving out plot from gavthan area. Admittedly, there are no title documents placed on record to prove title of the Plaintiffs and Defendants and both the Courts below have proceeded to record finding of title in favour of Respondents/Plaintiffs on preponderance of probabilities, which issue is agitated in the form of question of law.

2] When confronted, parties hereto agree that, by consent, judgment of the Trial Court so also that of lower Appellate Court can be set aside and parties can be relegated to appear before the Trial Court. It is also agreed that Trial Court can be directed to decide the suit from the stage of framing of issues. Parties further consent for liberty to produce additional evidence on record.

3] As the Court below has committed an error in recording finding of title without any evidence, in the backdrop of consent extended by parties before this Court, it will be appropriate in my opinion to quash and set aside the impugned judgment dated 26/9/2007 passed in Regular Civil Suit No.77 of 1996 and also judgment dated 9/2/2018 passed in Regular Civil Appeal No.271 of 2007. These judgments are accordingly quashed and set aside.

4] Parties agree that they shall appear before the learned Court of Civil Judge, Junior Division, Alibag on 24/2/2020 and we expect the Trial Court to deal with rival claims of the parties in the backdrop of pleadings afresh, if required by re-framing the issues and by permitting parties to adduce fresh evidence.

5] Second Appeal is accordingly disposed of. As a consequence, Civil Application taken out therein does not survive and same is also disposed of.

(NITIN W. SAMBRE, J.)