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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.22926 OF 2018**

Shri Janardhan Govind Salunkhe Appellant
V/s
Shri Hambirrao Bhagvan Babar and Ors. Respondents.

Mr. Amitkumar D. Sale for the Appellant.
Mr. Mandar Limaye for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 21, 2020

P.C.:-

1] Heard.

2] This appeal is against concurrent findings of courts below by original Plaintiffs. In a suit for declaration and possession, Appellant/Plaintiff sought possession of 19R land from Defendants. According to Appellant/Plaintiff, he was put into possession of land bearing Gat No.188 admeasuring 99R and Respondents/Defendants were put in possession of land bearing Gat No.189.

3] Relying on revenue entries which speak of the land of area admeasuring 19R fallen to the share of Appellant/Plaintiff by virtue of

Consolidation Scheme implemented in 1973-74 under the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter referred to for the sake of brevity as “the Act”), the learned Counsel for the Appellant would urge that question of law which falls for consideration is, “in view of provisions of Section 28 of the Act, whether Courts below have committed an error in inferring that Appellant has no title to the land to the extent of 19R i.e. subject matter of the suit?

4] So as to pursue this Court to record finding that Appellant, by virtue of legal fiction, as provided under Section 28 of the Act, has become owner of 19R land in addition to the land which is fallen to his share in 1964 oral partition, support is drawn from revenue record and measurement map. Both the courts below, while appreciating the said piece of evidence, have recorded that even if Consolidation Scheme of 1973-74 is admitted including the revenue entries, that by itself will not amount to admission of title of Appellant over the suit property to the extent of 19R land out of Gat No.188.

5] If Appellant/Plaintiff has come out with a case of declaration

and possession based on oral partition, in Consolidation Scheme wherein he claimed to have been put into possession of additional land of 19R, the Appellant/Plaintiff was expected to discharge the onus by adducing appropriate evidence which he has failed to. In the aforesaid backdrop, reliance placed by the Appellant on the provisions of Section 28 of the Act so as to pursue this Court to draw an inference that Appellant became owner of 19R land which is encroached by Respondents/Defendants is without any basis or evidence. The view expressed by both the Courts below against the Appellant appears to be just and proper based on available pleadings and evidence on record. No interference is called for in the second appellate jurisdiction. Second Appeal fails and same stands dismissed.

(NITIN W. SAMBRE, J.)