

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.334 OF 2022 WITH
CIVIL APPLICATION NO.8533 OF 2022**

Amit Prakashrao Bawaskar

... APPELLANT

VERSUS

Sau. Rupali Sharadchandra Borkar & ors.... RESPONDENTS

.....
Ms Nima R. Suryawanshi, Advocate for appellant

.....

CORAM : R. G. AVACHAT, J.

DATE : 22nd JUNE, 2022.

ORDER :

Heard Ms Suryawanshi, learned counsel for the appellant. This is original defendant's Second Appeal. He has suffered concurrent findings of facts recorded by both the Courts below. The suit, Regular Civil Suit No.207/2015 was filed by three sisters of the appellant herein for partition and separate possession of the property described in the plaint, besides some cash amount in deposit with State Bank of Hyderabad. The appellant is challenging the judgment and decree only in respect of granting the original plaintiffs' share in residential flat, situated at Shahnoorwadi, Aurangabad.

2. Learned counsel for the appellant/ original

defendant would submit that, the appellant has been in service. He has purchased the suit flat by raising a housing loan. The loan is being repaid from his monthly salary. The learned counsel meant to say that the suit flat was exclusively owned by the appellant. It was only out of love and affection the sale deed was executed in the joint name of himself and his mother. According to learned counsel, the material evidence that the loan raised for purchase of the flat is being repaid from the monthly salary of the appellant was not taken into consideration by both the Courts below. She would further submit that, the case of the plaintiffs was that they had contributed a sum of Rs.3,00,000/- for purchase of the flat. Both the Courts below have negated their contention. The learned counsel, therefore, urged for issuance of notice in the matter.

3. Considered the submissions advanced. Perused the judgments delivered by both the Courts below. Admittedly, the flat has been purchased in the name of the appellant and his mother. True, the appellant has raised a loan for purchase of the flat. The loan is being repaid by him. It is his case that, only out of love and affection the sale deed was executed in the name of himself and his mother. Both the Courts below have concurrently held that the father of the

appellant was in service. His mother has received retiral benefits. The mother might have contributed for purchase of the flat. Since the flat has been purchased in the name of mother along with the appellant, both the Courts below have rightly held the mother to have equal share in the flat along with the appellant. Both the Courts below have granted share to the daughters/ three plaintiffs and the appellant also in the one half share in the flat. It is a concurrent finding of fact recorded by both the Courts below. It is reiterated that the mother had with her, funds since her husband was in service.

4. It was averred in the plaint that the mother had also contributed for purchase of the flat. The finding recorded by both the Courts below is a finding of fact. This Court finds no substantial question of law to have been involved in this Second Appeal. The appeal is, therefore, liable to be dismissed at admission stage itself. The same is, therefore, dismissed. Consequently, Civil Application is also dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-