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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 166 OF 2017**

Shri Fatulal Gulab Sutar and Ors ... Appellants

vs.

Shri Murshid Mahibub Sutar and Ors ... Respondents

Mr. Ajay Joshi for Appellants.

CORAM : GAURI GODSE, J.

DATED : 7th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the original plaintiffs to challenge the concurrent judgments and decrees dismissing the suit for declaration that the partition decrees in the earlier suit were obtained by practicing fraud.

2. Learned counsel for the appellants submits that after the decree for partition and separate possession in the earlier suit was passed, the plaintiffs discovered 'C' extract issued by the Grampanchayat which would indicate that the plaintiffs' father was the exclusive owner of the suit property. He, therefore, submits that both the courts failed to consider the crucial aspect about the

exclusive rights of the plaintiffs' father. He thus, submits that the second appeal would require consideration as the material aspect of the exclusive ownership of the plaintiffs' father is not properly considered by both the courts.

3. I have perused the impugned judgments. The plaintiffs who were parties to the earlier suit for partition and separate possession, were granted share in the earlier suit. It is not in dispute that even in the earlier suit the plaintiffs had raised a defense about exclusive ownership of their father. The said defense was not accepted in the earlier suit. The judgments and decrees in the earlier suit granting partition and separate possession have attained finality. Discovery of the new document to support contentions which are already dealt with in the earlier suit cannot be accepted as a ground to set aside the partition decree on the ground of fraud.

4. Both the courts have dealt with the contentions raised by the plaintiffs and disbelieved the allegations of fraud. I do not find any illegality or perversity in the reasons recorded by both the courts.

5. The second appeal does not raise any substantial questions of law. Hence, the second appeal is dismissed.

(GAURI GODSE, J.)