IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

931 SECOND APPEAL NO. 579 OF 2026

BABRUWAN SUBHASH GAIKWAD
VERSUS
VENKAT NIVRUTTI GAIKWAD DIED THROUGH LRS
SUVARNA VYANKAT GAIKWAD AND OTHERS
...
Advocate for Appellant : Mr. Chaitanya Vijay Dharurkar.
...

WITH
CIVIL APPLICATION NO. 12073 OF 2026
IN SA/579/2026
...

CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 30th October, 2026.

Per Court:

1 Heard learned Advocate for the appellant.

2 The learned Advocate for the appellant pointed out the pleadings, the evidence, the grounds of objections raised in the appeal with the proposed substantial questions of law, and reasons and findings in the impugned judgment and decree.

3 Learned Advocate for the Appellant submitted that the suit for partition was dismissed, and the Appellate Court held that the suit property which was got by the present appellant from his cousin, is the joint family property. There is no such pleading and evidence to show that suit property got by the appellant independently or he has

purchased it. The Appellate Court has relied upon the mutation entry which is not conclusive proof. He submitted that, following substantial questions of law arises for determination:-

A] Despite there being a clear admission by the Plaintiff in his cross-examination of the Whether the First Appellate Court lost sight of the settled principle of law as enunciated u/s 58 of the Indian Evidence Act i.e. *'Facts admitted need not be proved'* and gave undue credence to the Mutation entry No.1525?

B] Whether the undue credence given to the Mutation entry No.1525 by the First Appellate Court is contrary to the settled principle of law that *'Mutation entries are only for fiscal purposes and they do not cast any right?'*

4 On perusal of the impugned judgment and decree, this Court found that the learned Appellate Court has reappreciated the evidence and relied upon the mutation entry No.1789, at Exhibit-9. The mutation entry has presumptive value as per Section 157 of the MLR Code, 1966 and it is presumed to be legal and correct, and there is no evidence of rebuttal of it. In the peculiar set of facts and circumstances of the case, the burden lies upon the appellant to prove that it is his self-acquired property. The consent deed is not sufficient and conclusive proof of the self-acquired property of the appellant. The Appellate Court thus, come to the right conclusion on the fact that the

suit properties are joint family properties. No any evidence is adduced on record that an amount of Rs.1,40,000/- was paid to the cousin by the appellant for purchasing those properties. It is an admitted fact that the appellant and respondents are agriculturists. It is not case of the appellant that he has separate source of income from which he purchased the suit property. In the absence of such evidence, this Court is of view that no any substantial question of law arises to determine. There is no substance in the grounds of objections of this appeal. The Second Appeal, therefore, deserves to be dismissed. The Second Appeal is dismissed in limine.

5 Pending Civil Application is disposed of

[SANJAY A. DESHMUKH, J.]

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