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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.793 OF 2015
WITH
CIVIL APPLICATION NO.1675 OF 2015

Krishna A. Mane & Ors.	...Appellants
V/s.	
Sunil J. Kamble & Ors.	...Respondents

Mr.Madhav J.Jamdar for the Appellants.

Mr.Sanjeev Sawant for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 19TH NOVEMBER, 2015.

P.C. :-

1. By this second appeal the appellants seeks to impugn the order dated 20th August, 2015 passed by the District Judge, Sangli dismissing the appeal filed by the appellants herein and also the judgment and order passed by the learned trial Judge. The appellants were original defendant nos.1-A and 1-B before the trial Court. The plaintiffs have filed the suit for possession based on the sale deed executed admittedly by the appellants in their favour. It was the case of the original plaintiffs that after execution of the sale deed, the appellants obtained possession of the suit land by unlawful means. The trial Court after considering the evidence has passed the order and decree in favour of the plaintiffs and directed the appellants herein to hand over possession of the suit property.

2. The said judgment and decree has been impugned by the appellants herein before the learned District Judge. The learned District Judge after considering the submissions recorded by the parties has upheld the finding in favour of the original plaintiffs and directed the appellants to hand over possession of the suit land.

3. Mr.Jamdar, learned counsel appearing for the appellants fairly submits that the appellants have not disputed the fact that the appellants have already executed the sale deed in favour of the original plaintiffs. He however, submits that the fact that the said land, which was the subject matter of the sale deed, was the watan land and was governed by the provisions of The Bombay Inferior Village Watans Abolition Act, 1958 and the appellants not having obtained previous sanction of the Collector under section 5(3) of The Bombay Inferior Village Watans Abolition Act, 1958, the said sale deed though executed by the appellants in favour of the original plaintiffs was void and illegal and no title would be transferred under the said sale deed in favour of the original plaintiffs.

4. Learned counsel appearing for the appellants could not point out any such plea raised by them before the trial Court or before the appellate Court. The appellants having also not filed any separate suit for a declaration that the sale deed executed by the appellants in favour of the original plaintiffs was illegal for want of prior sanction of the Collector under section 5(3) of The Bombay Inferior Village Watans Abolition Act, 1958. In my view the appellants cannot be allowed to raise that issue for the first time at this stage across the bar. Both the courts below have considered the entire evidence and pleadings and also the provisions of law. The findings rendered by the courts below are not perverse and thus cannot be interfered with in

this second appeal filed under section 100 of the Code of Civil Procedure, 1908.

5. The appeal is devoid of merits and is accordingly dismissed.

6. In view of disposal of the second appeal, the civil application does not survive and is accordingly disposed of.

7. Mr.Jamdar, learned counsel for the appellants seeks continuation of the interim order to enable the appellants to file Special Leave Petition and undertakes not to create any third party rights or part with possession in respect of the suit property during the pendency of the Special Leave Petition, if any, filed by the appellants. The statement is accepted.

8. Interim order passed by this Court to continue for a period of eight weeks from today subject to the statement made by learned counsel for the appellants.

(R.D. DHANUKA, J.)