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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.244 OF 2012

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| 1. | Shaikh Gafoor s/o Shahnoor Patel
Age - 44 years, Occupation - Labour
R/o Jikthan, Taluka - Gangapur
District - Aurangabad | APPELLANTS |
| 2. | Shakeela Bee w/o Shaikh Gafoor
Age - 37 years, Occ - Household,
R/o Jikthan, Taluka - Gangapur
District - Aurangabad | |

VERSUS

- | | | |
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| 1. | Shaikh Anees s/o Shahbuddin Patel
Age 51 years, Occupation - Business
R/o Jagirdar Colony, Railway Station Road,
Aurangabad | RESPONDENTS |
| 2. | Zakiya Begum w/o Shanoor Patel,
Age - 62 years, Occupation - Household
R/o Jagirdar Colony, Railway Station Road,
Aurangabad | |

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Mr. M. A. Khan, Advocate for the appellants
Mr. G. J. Pahilwan h/f Mr. F. V. Patel, Advocate for respondents

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 18th JANUARY, 2016

ORAL JUDGMENT :

1. Heard learned advocates for the parties.
2. A suit was instituted by respondents seeking possession of two rooms and injunction in respect of other two rooms wherein

there was disturbance by present appellants-defendants to the possession of the respondents - plaintiffs.

3. Relevant facts, necessary for decision of present second appeal can be narrated as under-

Around July 1999, the respondents had purchased the suit property and had been in possession of the same. While plaintiff No.2 had been residing in two rooms on the southern side, plaintiff No.1 was residing in two rooms on northern side. The plaintiffs went into litigation against present appellants earlier on instituting a suit simplicitor for injunction. However, it is claimed that during pendency of said suit, plaintiffs had been dispossessed from two rooms and as such, said suit came to be withdrawn with liberty to file a fresh suit. Accordingly, present litigation had ensued for possession of two rooms and injunction in respect of other two rooms.

4. The plaintiffs have claimed that they are owners of the property concerned under a registered sale deed with which defendants - present appellants have no concern. The appellants - defendants do not dispute that the property is purchased in the name of plaintiffs, however, it is being sought to be claimed that the property had been purchased from the amounts received by

plaintiff No.1 towards provident fund and gratuity amounts received upon death of her husband. However, from the record it appears that the defendants - appellants have not been able to connect receipt of the amount in 1993 for purchase of the property in 1999. It is being contended by learned advocate for the appellants - defendants that they are now in possession of certain documents about the amounts of provident fund and gratuity having been received by plaintiff No.1.

5. However, it emerges on record very clearly that there is no evidence worth the name, given on behalf of the defendants, to show that the purchase in 1999 has been made from the amount so received by plaintiff No.1. It is contended in arguments that plaintiff No.1 had no source of income and as such, it should be deemed that the amount received by plaintiff No.1 in 1993 has been utilized for purchase in 1999.

6. In the absence of any evidence to show aforesaid, it is difficult to go by the theory being developed presently with reference to documents received under the Right to Information Act, unless there is some material produced on record to connect purchase made in 1999 by plaintiff with the amount received from provident fund and gratuity in 1993.

7. Present litigation is concerned with possession and injunction with reference to title being claimed under a registered sale deed. The plaintiffs have been able to establish possession on evidence as has been appreciated by the courts below. Such an appreciation as far as purpose of the suit is concerned does not appear to be not based on any material.

8. In the circumstances, the second appeal does not appear to give rise to substantial question of law and as such, the same stands dismissed.

9. In view of dismissal of the second appeal, civil application No.2439 of 2012 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]