

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

SECOND APPEAL NO. 628 OF 2015

1. Ramjan Kasam Shaikh (since
deceased) through legal heirs :
1/A Janabai Kasam Shaikh & ors. .. Appellants

versus

Shila Gangadhar Bhalerao and anr. .. Respondents

Mr. Chetan Jadhav, Adv. for Mr. K.M.Nagarkar, Adv. for appellants
Mr. V. S. Bedre, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
1ST MARCH, 2016

ORDER:

1. This second appeal has been preferred by original defendants challenging concurrent findings, whereunder plaintiffs-respondents herein have succeeded in proving their title to the property, one recorded by trial court [Civil Judge, Junior Division, Rahata] in regular civil suit no.731 of 2004 on 20-12-2010 decreeing said suit, and another by appellate court [District Judge-2, Kopergaon] in regular civil appeal no. 3 of 2011 on 13-07-2015 confirming the decree by trial court.

2. Resistance by defendants-appellants herein to the suit on the ground of suit property having been mortgaged did not hold any strength in the absence of any registered document. The decree by trial court as such had been maintained by the appellate court.

3. Learned counsel for the appellants has strenuously urged before this court to consider that the suit has all the trappings of a suit under Maharashtra Rent Control Act, for, decree of eviction had been sought on the ground of bonafide requirement. Under the circumstances, suit ought to have been dismissed and the appeal ought to have been allowed.

4. Learned counsel for appellant makes reference to various factual aspects like purchase had been of two *guntha* initially in the names of minor Yuvraj and Chandrakant. Subsequently, from said land, a piece of one *guntha* had been sold to father of defendant no. 1 and that the suit property had been mortgaged to defendants. However, as observed hereinabove, theory of mortgage could not be sustained in the absence of any reliable material and legally acceptable evidence and further having regard to that position of the suit property having been sold to and owned by the plaintiffs could not be rebutted, decree has been passed by the courts concurrently.

5. Mr. Bedre, learned counsel appearing on behalf of respondents at the very outset has pointed out that the decree has

already been executed and plaintiffs has been put in possession of the suit property. Further, it appears to have been learnt that the subject-matter of litigation has been demolished.

6. Having regard to aforesaid, concurrent decisions of two courts in the absence of any material which would take out worthiness of evidence are not liable to be disturbed.

7. Second appeal, as such, is dismissed.

SUNIL P. DESHMUKH,
JUDGE

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