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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 3324 OF 2016

Mr. Manohar Sakharam Shinde and Ors. ... Petitioners.

V/s.

Smt. Hirabai Narayan Powar and Ors. ... Respondents.

Mr. P.D. Dalvi for the Petitioners.

None for the Respondents.

CORAM : N.M. Jamdar, J.

18 August, 2016.

Oral Order :-

The Petitioners challenge the Judgment and order passed by the District Judge, Kolhapur dated 9 December 2015 allowing the Misc. Civil Appeal No. 209 of 2015 filed by the Respondent – Defendant and setting aside the order passed by the learned Civil Judge, Junior Division, Kolhapur below Exhibit 5 in the suit instituted by the Petitioners.

2. The learned Civil Judge by order dated 13 August 2015 granted an order of injunction in favour of the Petitioner relying on the 7/12 extracts of the suit property and the fact that the

Respondent – Defendant had earlier filed a suit for specific performance which was dismissed. The learned Civil Judge did not place any reliance on the recitals in the sale deeds are relied upon by the Respondent – Defendant. In the Appeal, the learned District Judge came to the conclusion that the sale deed is relied upon by the Respondent – Defendant was a registered sale deed and its recitals could not be kept aside for consideration. The learned District Judge accordingly gave more weightage to the recitals in the deed than the 7/12 extracts and allowed the Appeal.

3. The learned Counsel for the Petitioners submitted that once discretionary orders are passed by the learned Civil Judge after considering the entire evidence, then unless perversity was shown, the learned District Judge should not have interfered with the discretionary order.

4. In the circumstances of the present case, the learned District Judge has rightly interfered with the discretionary order. The documents relied upon by the Respondents were registered documents and at prima-facie stage the legality of these agreements could not have been gone into by the learned Civil Judge. As far as the 7/12 extracts are concerned, they are maintained for fiscal purpose and the learned District Judge has rightly given more weightage to the registered agreements and the recitals therein. The

order was passed by the learned Civil Judge on 13 August 2015 and it was reversed immediately on 9 December 2015 by the learned District Judge.

5. In the circumstances, no case is made out for interference in an equitable jurisdiction of this Court. The Writ Petition is accordingly rejected. It is clarified that the observations made by the learned District Judge in the impugned order as well as in the present order are prima-facie opinions and the suit will be decided on its own merits.

(N.M. Jamdar, J.)