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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.896 OF 2015
WITH
CIVIL APPLICATION NO.1088 OF 2015

Govind G. Gharat, since deceased,
through His L.Rs. - Ms.Geeta G. Gharat & Ors. ...Appellants
...Ori. Plaintiffs

V/s.

Madhav G. Gharat & Ors. ...Respondents

Mr.H.S.S. Murthy i/b Mr.Abhishek Patil for the Appellants / Original
Plaintiffs.

Ms.Tejas Kapre i/b Mr.J.S. Kapre for the Respondent No.1.

Mr.Agnel Carneivo i/b Mulla & Mulla & C.B. & C. for the Respondent
No.3.

CORAM : R.D. DHANUKA, J.
DATE : 14TH DECEMBER, 2016.

P.C. :-

1. By this appeal the original plaintiffs have impugned the order passed by the learned trial Judge in Exhibit – 5 to the extent that the learned trial Judge has refused to grant injunction against the defendant no.3 from disturbing the alleged possession of the plaintiffs is concerned.

2. The plaintiffs have filed a suit *inter-alia* praying for a

declaration that the document dated 8th May, 1944 alleged to have been executed between Gopal Bhaskar Gharat and Smt.Mudubai Inas Sirvel in respect of the said suit property, is sham, bogus, null and void and not binding on the plaintiffs. The plaintiffs have also applied for various other reliefs in the plaint.

3. It was the case of the plaintiffs that since 1944, the predecessor of the plaintiffs who was the owner of the property was cultivating the suit land and after his demise, the same is being cultivated by the plaintiffs. It is the case of the plaintiffs that they were in continuous possession of the suit property.

4. It is the case of the plaintiffs that though the defendant no.3 claims to have entered into agreement with the original mortgagee under the agreement dated 7th September, 2012, the possession of the suit property is still in possession of the plaintiffs.

5. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge has *prima-facie* made the observation that the plaintiffs have not proved their title.

6. During the course of the argument, I repeatedly raised a query to the learned counsel appearing for the defendant no.3 to show whether any proof is produced by the defendant no.3 before the learned trial Judge to show their possession in respect of the suit property, learned counsel for the defendant no.3 submits that in the

sale deed entered into between his client and the predecessor in title, it is recorded that possession of the suit property is given to his client. He however, submits that the suit land is barren and open land.

7. A perusal of the order passed by the learned trial Judge indicates that though the learned trial Judge has *prima-facie* observed that the plaintiffs have failed to prove their possession in respect of the suit property, the learned trial Judge has not made any observation about the alleged possession of the defendant no.3.

8. In view of this fact, I am not inclined to interfere with the impugned order passed by the learned trial Judge. It is however, made clear that the observations made by the learned trial Judge against the appellants about possession of the suit property are *prima-facie* observations. The learned trial Judge shall decide the suit on its own merits without being influenced by the observations of possession made by the learned trial Judge against the appellants.

9. With these clarifications, the appeal from order is disposed of. There shall be no order as to costs.

10. In view of disposal of the appeal from order, the Civil Application No.1088 of 2016 does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)