

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 35 OF 2013

WITH

CIVIL APPLICATION NO. 93 OF 2013

IN

SECOND APPEAL NO. 35 OF 2013

Shri. Shirish Prabhakar Bhopatrao

.... Appellant
(Orig. Obstructionist)

 V_S

Shri Pyarelal Bishnu Sharma & Ors.

... Respondents
(Orig. Respds)

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Mr. S. V. Palsuledesai for the appellant/applicant.

Mr. K. K. Jadhav for the respondent No. 1.

Ms. Rashmi Dandekar i/b Mr. V. N. Tayde for respondent No. 2.

CORAM : N. M. Jamdar, J.

DATE : 25 APRIL, 2016

P.C. :

1 The Appellant-Obstructionist challenges the order passed by the District Judge, Kalyan in Civil Appeal No. 60 of 2012 dated 5th September 2012 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Junior Division, Kalyan rejecting the objection raised by the Appellant to the execution of the decree.

2 The learned counsel for the Appellant submitted that the Appellant is in possession in his own right as he has purchased the property from the decree holder. This theory is put forth during the course of oral argument for the first time during the hearing of this appeal. All along the case of the Appellant that it is the Judgment

Debtor who sold the property to him. Both the courts have considered this contention. The only document on the basis of which the Appellant has claimed ownership of the property is stamp paper and an affidavit-cum-declaration. Both the courts have rightly observed that no title can be conferred by virtue of such documents.

3 The learned counsel then submitted that earlier when the Appellant resisted the decree the court had passed the order stating that it is necessary to receive oral as well as documentary evidence. However that order was only an interlocutory order and when the legality of the final order is being contested, the Appellant must show existence of any right in his favour in the first place. Mere affidavit will not create any right whatsoever in favour of the Appellant and therefore there is no need for any oral evidence. Both the courts have rightly observed that this is a clear case of collusion between the Appellant and the Judgment debtor - the tenant to deprive the decree holder of his rights. The Apex Court in various decisions deprecated abuse of the court process to create hurdles in the execution proceedings. No question of law muchless substantial question of law arises.

4 The Second Appeal and the Civil Application are dismissed.

(N. M. Jamdar, J.)