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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.279 OF 2016
WITH
CIVIL APPLICATION NO.535 OF 2016

Ganpati D. Shete & Anr.	...Appellants
V/s.	
Vaishali V. Shete & Ors.	...Respondents

Mr.Nagesh Chavan for the Appellants.

Mr.Bhushan Walimbe for the Respondent Nos.5 to 8.

CORAM : R.D. DHANUKA, J.
DATE : 6TH OCTOBER, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and decree dated 24th August, 2015 passed by the learned Additional District Judge, Islampur – 1, dismissing Regular Civil Appeal No.39 of 2013 filed by the appellants. The appellants had impugned the judgment and decree dated 26th February, 2013 passed by the learned Civil Judge, Junior Division, Islampur in Decree Final Execution No.6 of 2001 (Old Darkhast No.133 of 1981).

2. It is not in dispute that the partition suit between the parties filed by the original plaintiffs came to be decreed in the year 1976.

Both the parties were assigned certain share in the property by the learned trial Court. The said decree passed by the learned trial Court was challenged by the original defendants right upto this Court and were unsuccessful.

3. The original plaintiffs thereafter applied for final decree of partition and applied for execution of the decree.

4. The Executing Court appointed a Court Commissioner for taking measurement and for effecting the partition by meets and bounds. The Court Commissioner submitted a report before the Executing Court and suggested the mode and manner of physical partition of the property by meets and bounds and also demarcated the access available to both the parties to their respective plots. It is not in dispute that the appellants herein has not disputed the Court Commissioner's report before the Executing Court. The Executing Court passed a detailed order accepting the report submitted by the Court Commissioner and allowed the application filed by the original plaintiffs.

5. Being aggrieved by the said judgment and decree dated 26th February, 2013, passed by the Executing Court, the original defendants field an appeal before the learned Additional District Judge – 1, Islampur (Regular Civil Appeal No.39 of 2013).

6. The first appellate Court by an order dated 24th August,

2015, dismissed the said civil appeal filed by the original defendants and confirmed the order passed by the Executing Court on 26th February, 2013.

7. Learned counsel for the appellants submits that the learned Court Commissioner suggested the access to the property earmarked for the appellants from the plot of a third party. He submits that the report of the Court Commissioner was seriously objected by the appellants. He also placed reliance on some additional documents produced before this Court for consideration of this Court.

8. It is not in dispute that the documents which are sought to be now produced before this Court were not produced by the appellants before the trial Court.

9. A perusal of the order passed by the learned Additional District Judge – 1, Islampur on 24th August, 2015, indicates that the first appellate Court also has considered the entire material produced before the Executing Court, including the report of the Court Commissioner and has confirmed the findings rendered by the Executing Court. A perusal of the record indicates that the appellants have unnecessarily delayed the execution of the decree passed by the learned trial Judge and the final decree passed by the learned trial Court. Both the Courts below have rendered the findings which findings are concurrent findings and being not perverse, this Court

cannot interfere with the findings rendered by the two Courts below under section 100 of the Code of Civil Procedure, 1908.

10. There is no substantial questions of law arising in this second appeal. The appeal is devoid of merits and is accordingly dismissed. No order as to costs.

11. In view of dismissal of the second appeal, Civil Application No.535 of 2016 does not survive and is accordingly dismissed.

(R.D. DHANUKA, J.)