

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

SECOND APPEAL NO. 37 OF 2015

WITH

CIVIL APPLICATION NO. 80 OF 2015

IN

SECOND APPEAL NO. 37 OF 2015

Daulati Keshav Shinde & Anr.

...Appellants

Versus

Sou. Shobha Shankar Dhaware & Ors.

...Respondents

Mr. Sushil Inamdar, for the Appellants.

Mr. Tanaji Mhatugade, for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 21st November 2016

ORDER :

1. By this Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellants (original Defendants No. 5 and 8) have impugned the judgment and decree dated 30th August 2013 passed by the learned District Judge -1, Kolhapur dismissing the Regular Civil Appeal No. 302 of 2007 filed by the Appellant No. 1 wherein the Appellant No. 1 had impugned the judgment and decree

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dated 10th September 2007 passed by the learned Trial Judge in the Suit No. 880 of 2004 thereby partly decreeing the Suit filed by the original Plaintiff and declaring the Sale Deed dated 16th June 2004 in respect of Plot No. 49 executed by Defendant No. 5 in favour of Defendant No. 8 as void.

2. The original Plaintiff had filed a Suit *inter alia* praying for partition in respect of several properties including Plot No. 49. The learned Trial Judge rejected some of the reliefs claimed by the original Plaintiff. However, insofar as Plot No. 49 is concerned, which was sold by the Defendant No. 5 in favour of Defendant No. 8, it is held that since the said plot was owned by the State Government and since without prior permission of the State Government, the said property was sold, the Sale Deed executed by Defendant No. 5 in favour of Defendant No. 8 was declared as void.

3. Being aggrieved by the said judgment and decree dated 10th September 2007 insofar as the declaration of the Sale Deed by Defendant No. 5 in favour of Defendant 8 is concerned, the Regular Civil Appeal No. 302 of 2007 is filed in the Court of learned Ad-hoc District Judge, Kolhapur. The District Judge passed judgment and decree dated 30th August 2013 dismissing the Appeal filed by the

Defendant No. 5 and also dismissing the Cross Objection filed by the Plaintiff. This judgment and decree dated 30th August 2013 is impugned by the Defendant No. 5 and Defendant No. 8 in this Second Appeal.

4. The learned Counsel for the Defendants No. 5 and 8 submits that there is no dispute that the Plaintiff had failed to prove that the Plaintiff was entitled for partition/separate possession and declaration. He submits that the Defendant No. 5 thus, could have executed the Sale Deed in respect of the suit property in favour of the Defendant No. 8. He submits that in any event, an Application is filed by the Defendants No. 5 and 8 before the State Government for regularization and the same is pending.

5. The learned Counsel for the Plaintiff on the other hand invited my attention to the findings recorded by the two Courts below insofar as execution of Sale Deed by Defendant No. 5 is concerned. He submits that it has been proved beyond reasonable doubt that the suit property belonged to the Government and was allotted to the predecessor-in-title of the original Plaintiff on various conditions. He submits that the suit property could not have been transferred by the Defendant No. 5 in favour of the Defendant No. 8

without obtaining prior sanction of the State Government in view of the terms and conditions of the allotment. He submits that both the Courts below have therefore, rightly declared the Sale Deed executed by Defendant No. 5 in favour of Defendant No. 8 as void since the same was executed without obtaining prior sanction of the State Government.

6. It is submitted that whether the Plaintiff could have granted relief of partition of property or not is already concluded by two Courts below and is not agitated by both the parties in the present Appeal.

7. In my view, the limited issue which is the subject matter of this Appeal is whether the Defendant No. 5 could have executed any Sale Deed in favour of the Defendant No. 8 in respect of the Plot No. 49 without prior sanction of the State Government which belongs to the Government and was allotted to the predecessor-in-title of the Plaintiff on various terms and conditions.

8. There is no dispute that the Defendant No. 5 did not obtain permission before executing Sale Deed in favour of Defendant No. 8 from the State Government. The learned Trial Judge as well as the first Appellate Court considered this mandatory condition before

transfer of the suit property and has rightly declared the Sale Deed executed by Defendant No. 5 in favour of Defendant No. 8 as void.

9. The fact that the Defendants No. 5 and 8 have applied for regularization of the Sale Deed itself to the State Government now clearly indicates that prior sanction of the Government before execution of the Sale Deed by Defendant No. 5 in favour of the Defendant No. 8 was mandatory which was admittedly not obtained.

10. I do not find any infirmity with the judgment and decree passed by the learned Trial Judge as well as first Appellate Court. No substantial question of law arises in this Second Appeal.

11. In my view, there is no substance in the Second Appeal and it is devoid of merits. I therefore, pass the following order:-

(i) The Second Appeal is dismissed.

(ii) No order as to costs.

(iii) In view of dismissal of this Second Appeal, the Civil Application No. 80 of 2015 does not survive and is accordingly, dismissed.

[R.D. DHANUKA, J.]