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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**909. SECOND APPEAL NO. 653 OF 2015
WITH
CIVIL APPLICATION NO.14900 OF 2015
WITH
CIVIL APPLICATION NO. 14907 OF 2015
IN
SECOND APPEAL NO. 653 OF 2015**

SHEIKH YOUNUS SHEIKH ABDUL GANI

... APPELLANT.

VERSUS

SHEIKH ABDUL RAFIQ SHEIKH ABDUL GANI

... RESPONDENT

MR Awasarmol Rahul O., Advocate for Appellant,

MR Shri S.G. Ladda, Advocate for respondent sole.

CORAM : N.W. SAMBRE, J.

DATE : 28th June, 2017

ORAL ORDER

The present appellant/original plaintiff filed Regular Civil Suit No. 930/2010 for perpetual injunction stating that suit property block No. 46 admeasuring 4 acres 2 Gunthas at village Pimpri Raja (Khurd) was purchased by him vide sale deed No. 2287 on April 24, 1988. According to him, respondent/defendant is serving in Police Department and in view of his financial incapacity to lay pipeline from the well and provide irrigation equipments, nominal sale deed was executed by the present

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appellant in favour of respondent on 13th January 1993.

2. It is then claimed that by virtue of earlier sale deed dated April 24, 1988, present appellant is in settle possession over the suit property. As such, suit in question.

3. The Trial Court decreed the suit vide judgment and decree dated June 6, 2013. However, in an appeal being Regular Civil Appeal No. 146/2013 the learned District Judge, Aurangabad, allowed the same and dismissed the suit. As such, this Second Appeal.

4. The learned Counsel for the appellant in aforesaid backdrop would invite attention of this Court to the issues, which are framed by the Trial Court at Exh. 26, and the points which are framed by the lower Appellate Court for its consideration. According to him, while dealing with the issue of possession, the Trial Court has recorded finding in favour of the present appellant, whereas, lower Appellate Court has recorded the same finding in the negative by relying upon the sale deed, alleging that possession of present appellant is not lawful.

5. According to him, while deciding issue of injunction, the possession of appellant whether is lawful or not, is not a legal issue, which is required

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to be discussed or decided, but whether appellant is in settled possession is an issue, which is rightly answered by the Trial Court in his favour. According to him, the judgment and decree of the lower Appellate Court need to be upset and judgment and decree of the Trial Court need to be maintained.

6. Shri Ladda, learned Counsel for respondent/original defendant would invite attention of this Court to the findings recorded in earlier suit being Regular Civil Suit No. 723/2007 and the evidence of present appellant/plaintiff and his witnesses, whereby possession of the respondent/defendant over the suit property was admitted. According to him, judgment in earlier suit being R.C.S. No. 723/2007 for injunction, initiated by present appellant/plaintiff, has been rightly held to operate as res-judicata.

7. Having considered rival submissions, it is required to be noted that the entire revenue record is in favour of respondent/defendant. The present appellant in the earlier suit has admitted execution of sale deed in favour of respondent and is claiming his possession over the suit property by virtue of the sale deed executed on 24/04/1988 in his favour. However, subsequent sale deed dated January 13, 1993 executed by appellant/plaintiff in favour of respondent/defendant is not challenged or

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questioned in the suit preferred by the appellant/plaintiff. As such, the subsequent sale deed dated January 13, 1993, still holds the field, based on which there appears to be revenue entries in favour of respondent/defendant.

8. If the above conduct in the backdrop of the provision of the Evidence Act, particularly, Section 43, is appreciated, the judgment in the earlier suit being R.C.S. No. 723/2007 has been rightly considered by the lower Appellate Court, including that of evidence, so as to answer issue of possession in favour of the respondent/defendant.

9. I hardly notice involvement of any question of law in the present appeal.

10. In the aforesaid backdrop, appeal stands dismissed.

11. Civil Application, if any, stands disposed of.

(N.W. SAMBRE, J.)

pjm