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

**SECOND APPEAL NO. 420 OF 2014
WITH
CIVIL APPLICATION NO.954 OF 2014
IN**

SECOND APPEAL NO.420 OF 2014

Waman Jivla Tungar ...Appellant.

VS

Laxman Jivla Tungar & Ors. ...Respondents.

.....

Mr Dilip Bodke for the Appellant.

Mr Sachin Gite for Respondent No.1.

Mr A.A.Palkar AGP for Respondent Nos.2 and 4.

.....

**CORAM : N.M.JAMDAR, J.
APRIL 25, 2017**

ORAL ORDER:

The Appellant is the original Plaintiff. The Appellant filed Regular Civil Suit No.644 of 1995 in the Court of Civil Judge, Senior Division, Nashik. In this suit the Appellant joined his brother as Defendant No.1 and other parties were Government Servants and the earlier owner of the suit property as Defendant No.5. It was the case of the Appellant that the suit property, an agricultural land situated at village Nanashi, Taluka:- Dindori District :- Nashik, was agreed to be sold to him by Defendant No.5 on 8.2.1977 and he paid certain consideration for the same. It was contended that since the Appellant was a Government servant, permission from the authorities was required and since it took some time to get the permission, the sale-deed came to be executed in favour of Defendant No.1 his brother. It

was contended that Defendant No.1 taking advantage of this position, was disputing his title and interfering his possession and, therefore, suit have to be filed. Learned Civil Judge, Senior Division, Nashik by a Judgment and Decree dated 4th September, 2008 dismissed the suit. Regular Civil Appeal No.96 of 2008 filed by the Appellant was dismissed by the learned District Judge, Nashik by a Judgment and Decree dated 5th February, 2014.

2 Heard learned Counsel for parties.

3 Learned Counsel for the Appellant advanced contentions in respect of two aspects of the matter. Firstly, as regards the title of the Appellant and secondly, as regards the relief of injunction.

4 As regards the title, it was sought to be contended that it is only because the permission of the authorities was not forthcoming, that the agreement was executed in favour of Defendant No.1. Both the Courts have considered this contention. There is a registered sale-deed executed by Defendant No.5 in favour of Defendant No.1. It is pointed out by the learned Counsel for the Respondents that in the plaint the Appellant has not sought to set aside the sale-deed and has only sought a declaration that he is the owner. Once a registered sale-deed, which is not set aside, confers title on Respondent No.1, there is no question of declaring the Appellant as the owner of the property. No position of law is shown that, in fact in this case a declaration can be given in respect of a third person who has not purchased the

property. It must be kept in mind that the Appellant was a government servant.

5 Learned Counsel for the Appellant then submitted that at least the relief of injunction could have been granted. He submitted that the agreement for sale executed with Defendant No.5, which is prior in point of time indicates that the Appellant was put in possession. He submitted that Defendant No.5 also has filed the Written Statement to that effect. He submitted that the witnesses were examined and 7x12 extract was also placed on record which have not been considered.

6 I have considered these submissions of the learned Counsel for the Appellant. For that purpose, the plaint has to be examined. The suit is filed primarily seeking declaration of the ownership and asserting the legal rights and thereafter seeking the order of injunction. As far as the right of the Appellant to seek any relief based on title as held above, there exist none. As far as the agreement of the Appellant with Defendant No.5 is concerned, the agreement did not fructify any further sale-deed in favour of the Appellant. As far as Defendant No.1 is concerned, this agreement has no meaning and also Defendant No.5 is no longer owner of the suit property. Apart from this position, Defendant No.5 while executing the sale-deed in favour of Defendant No.1 has made categorical statement in the sale-deed that the possession is handed over to Defendant No.1. Even assuming the possession was handed over to

the Appellant, which was prior in point of time, the recital in the sale-deed in favour of Defendant No.1 which has not been challenged, has gone unexplained which recital clearly state that the possession is handed over to Defendant No.1.

7 Therefore, both the Courts were faced with the position that the appellant had no concern whatsoever to the suit property and the sale-deed in favour of Defendant No.1 indicates that the possession was handed over to Defendant No.1. Keeping this position in mind, both the Courts considered the revenue records and found that they were not enough to come to the conclusion that on the date of filing the suit the Appellant was in possession. It was within the domain of both the Courts to decide how much importance is to be given to the pieces of evidence and what is their relative worth. Both the Courts have relied upon the categorical assertion in the sale-deed that possession was handed over to the Defendant No.1. The arguments of the learned Counsel for the Appellant on the aspect of possession are nothing but arguments regarding assessment of evidence and debate the comparative merits of each piece of evidence. It is not possible to do so in the limited jurisdiction of this Court under Section 100 of the Code of Civil Procedure. In the circumstances, no question of law arises. The Second Appeal is accordingly dismissed. In view of dismissal of the Appeal, nothing survives in the Civil Application and the same is disposed of accordingly.

(N. M. JAMDAR, J.)