

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******SECOND APPEAL NO.15 OF 2015***

Allabakash Sultan Tamboli & Ors. ..Appellants.

V/s.

Subhash Banduy Pudale ..Respondent.

Ms.Nasim Khan i/b. Mr.Kishore Patil for the Appellants.

Mr.Tejpall Ingale for Respondent No.1.

Coram : N.M.Jamdar, J.***Date : 3 April 2017*****ORAL ORDER**

Heard the learned counsel for the parties.

2. The Appellants were the Respondents in Regular Civil Appeal No.109/2013 filed by the respondent herein in the District Court, Jaysinghpur, District Kolhapur. The District Court by the Judgment and Order dated 27 March 2014 allowed the appeal and restrained the Appellants herein by an order of permanent injunction from disturbing the possession of the Respondent.

3. The Respondent filed Regular Civil Suit No. 230/2001 in the Court of Civil Judge, Junior Division, Shirol, District Kohlapur seeking permanent injunction against the Appellants. The Appellants filed Regular Civil Suit No.40/2002 thereafter, seeking a declaration that the sale deed executed in favour of the Respondent-herein be declared as void. The learned Civil Judge by the Judgment and Decree dated 29 July 2013 dismissed both the suits. As against the dismissal of Regular Civil Suit No.230/2001, the Respondent herein filed an appeal. The Appellants did not challenge the Judgment and Decree of the learned Civil Judge dismissing Regular Civil Suit No.40/2002. The learned District Judge had before him only the appeal filed by the Respondent in respect of the grant of injunction.

4. The learned counsel for the Appellants sought to argue that the sale deed in favour of the Respondent was not valid and it was only a mortgage transaction. It was contended that right of the other Appellants in the suit property was also not considered.

5. The suit filed by the Respondent was for injunction based on possession and the suit filed by the Appellants challenging the sale deed, was dismissed. The learned District Judge after considering the material on record, such as the sale deed so also the entry in the revenue record came to the conclusion that the Respondent is in possession of the suit property. The evidence of

other witnesses were also considered. Nothing has been pointed out as to why the factual finding that the Respondent is in possession be set aside. What is reiterated is only a challenge to the sale deed but no appeal from dismissal of the suit of the Appellants was before the learned District Judge. Therefore, based on possession, the learned District Judge granted the order of permanent injunction. In these circumstances, there is no perversity in the finding rendered by the learned District Judge. No question of law arises in this Second Appeal. The Second Appeal is accordingly dismissed.

5. It is informed that against the impugned order of the learned Civil Judge dated 29 July 2013, now an appeal has been filed by the Appellants challenging the dismissal of the Regular Civil Suit No.40/2002 with an application for condonation of delay. Needless to state that if the delay is condoned by the learned District Judge, the appeal will be heard on its own merits. The application for condonation of delay will also be heard on its own merits.

(N.M.Jamdar, J.)