

Sequeira

SECOND APPEAL NO. 280 OF 2017
Along with
CIVIL APPLICATION NO. 2065 OF 2015

Smt.Nirmala Arjun Kamble & ors. .. Appellants
Vs
Shri Namdev Tukaram Kadam. .. Respondent

Mr.Sangram Singh Yadav, for Appellants / Applicants.

None for the Respondent.

Coram : N.M.Jamdar, J.
Date : 18 April 2017.

Oral Order :

Heard learned counsel for Appellants.

2. The Appellants have challenged the concurrent judgment and orders whereby the Suit filed by the Respondent-Plaintiff for injunction has been decreed and the first Appeal filed by the Appellants has been dismissed.

3. The Suit was filed by the Respondent-Plaintiff stating that on 1 November 2001 an agreement for development was executed in

favour of the Respondent by the Appellants, so also irrevocable Power of Attorney, and after taking various steps and investing substantial amount, the Appellants started to interfere with possession and the development activities, hence, Suit for injunction had to be filed. The Regular Civil Suit No.881 of 2010 was accordingly decreed on 11 September 2013 by the learned Civil Judge, Kolhapur. The Civil Appeal No.269 of 2014 was dismissed by the learned District Judge, Kolhapur, on 16 January 2015.

4. The learned counsel for the Appellants submitted that there is no declaration sought and Suit for simplicitor injunction was not maintainable. He submitted that the documents which the Respondent relied upon are unregistered. He also relied upon the statement in the cross-examination of the Respondent that the Respondent has not been able to get permissions from the authorities.

5. As far as the agreement is concerned, the document was impounded thereafter it was registered and relevant stamp duty has been paid on the same. Both the Courts have rendered a finding that the Respondent has proceeded with his work of development. The main contention of the Appellants was that the agreement and Power of attorney were obtained by fraud. However, the Appellants did not step into witness box to state in what circumstances fraud was played upon them. This contention therefore, has been rightly negatived by both the Courts. As far as prayer seeking declaration is concerned

this argument was never advanced in the Courts, as can be seen from the fact that both the Courts have not framed an issue as regards the same. Once the agreement executed by the Appellants was duly proved then the Suit based on these documents, for injunction was maintainable. Both the Courts have rightly granted the order of injunction which is operating since the year 2013. Second Appeal does not raise any question of law and it is accordingly dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)