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

SECOND APPEAL NO.698 OF 2016
WITH
CIVIL APPLICATION NO.1121 OF 2016

Kisan Daji Sawant & Anr.

..Appellants.

V/s.

Deepak Gajanan Kakade /
Kothawale & Ors.

..Respondents.

Mr.Rushikesh Barge for the Appellants & Applicants.

Mr.Vaibhav Gaikwad for the Respondents.

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

The Appellants have challenged the concurrent Judgments and Orders passed by the Civil Judge, Junior Division, Koregoan, District Satara in Regular Darkhast No.52/2008 dated 22 March 2016 and the learned District Judge, Satara in Regular Civil Appeal No.185/2015 dated 3 May 2016 dismissing the Application Exhibit-58 in Regular Darkhast No.52/ 2008.

2. The suit property is Gat No.206 situated at Bhakarwardi, Taluka Koregaon. It is the case of the Appellants that the northern part of the said suit property which is put into execution is in possession of the Appellants. Both the Courts have taken note of the earlier round of litigations between the parties and the conclusions reached in both the decisions and concluded that the Appellants are not having any concern with the northern part of the suit property and they have been put up at the behest of the Judgment Debtor. The Respondents-Plaintiffs have filed Regular Darkhast No.52/2008 for execution of the decree. At that time, the Appellants filed an application in the said execution proceedings to be joined as a party and seeking to obstruct the decree on the ground that they are in possession of the suit property.

3. The learned counsel for the Appellants submitted that the Appellants have a share on the northern in side of the suit property and that by the sale deed dated 30 December 1988, rights to the extent of 1/4 share was transferred to the Appellants. The learned counsel for the Appellants has sought to place on record the decision of the learned District Judge, Satara in Regular Civil Appeal No.366/2007. It was contended that the second appeal from this decision is pending and there is a likelihood of conflicting proceedings in case the second appeal is disposed of in favour of the Appellants. The learned counsel for the Respondents, on the other hand placed on record the decision in the Second Appeal No.859 of

2016 which was filed by the Judgment Debtor challenging the Judgment and Decree which is put up for execution.

4. I have considered the arguments of the learned counsel for the Appellants. The learned District Judge has noted that there is no stay operating in the said second appeal relied upon by the Appellants. From the issues framed in the Appeal No.366/2007 before the learned Principal District Judge and the findings rendered thereupon, the declaration sought to be relied upon is in respect of Defendant Nos.3 to 6 and not the Defendant No.1 i.e. the present Appellant. Consequently, while dismissing the second appeal arising from the decree passed in the present proceedings, this Court has confirmed the finding that the mortgage was not created in respect of the northern side of the property. The second appeal was filed by the Judgment Debtor Narayan D. Sawant, who is the brother of the Appellant-obstructionist.

5. In these circumstances, both the Courts have rightly held that there is no merit in the challenge of the Appellants and the Appellants are only attempting to prolong the execution of the decree. No question of law arises. The Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)