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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.79 OF 2014
WITH
CIVIL APPLICATION NO.1483 OF 2013

Dnyaneshwar Murlidhar Ganage ..Appellant.

V/s.

Smt. Sunita Suresh Pathak ..Respondent.

Mr.A.B.Tajane with Monalipani for the Appellant & Applicant.

Mr.Anand Kulkarni for Respondent Nos.1 to 4.

Coram : N.M.Jamdar, J.

Date : 5 April 2017

P.C.:-

By order dated 17 January 2014, delay in filing the second appeal was condoned and by order dated 23 December 2014, ad-interim order granted on 18 October 2013 in Civil Application No.1482 of 2013 was continued.

2. The Appellant is aggrieved by the Judgment and Order dated 25 February 2013 passed by the learned District Judge, Solapur in Civil Appeal No.121/2007. By the impugned Judgment

and Order, the learned District Judge allowed the appeal filed by the Appellants-Defendants and set aside the Judgment and Decree passed by the learned Civil Judge, Junior Division, Solapur in Regular Civil Suit No.144/2002. The learned Civil Judge by the Judgment and Order dated 5 April 2007 had decreed the suit and directed the Appellants to execute the sale deed in favour of the Respondents.

3. It is the contention of the learned counsel for the Appellants that while allowing the appeal, due notice was not given to the Appellants and in these circumstances, the impugned order needs to be set aside. It is the contention of the learned counsel for the Respondents that the Appellants, in spite of the knowledge of pendency of the appeal, got the sale deed executed without notice to the Respondents.

4. The learned counsel for the parties after arguing the matter for some time, sought time to take instructions whether the second appeal could be disposed of by setting aside the Judgment and Order passed by the learned District Judge and restoring the appeal filed by the Respondent, so also, setting aside the said sale deed and thereby relegating the parties to the same position as they would be on the date of filing of the Regular Civil Appeal No.121/2007. The matter was adjourned to today for both the learned counsel to take instructions. The learned counsel for the parties, upon instructions, state that they are agreeable to this course of

action. Accordingly, by consent of the parties, the second appeal is disposed in the following terms:-

- (i) The Judgment and Order passed by the learned District Judge, Solapur in Regular Civil Appeal No.121/2007 dated 25 February 2013 is quashed and set aside. Regular Civil Appeal No.121/2007 stands restored to the file of the learned District Judge, Solapur;
- (ii) The sale deed dated 13 April 2012 executed through the Court Commissioner in pursuance to Regular Darkhast No.97/2009 stands declared as void and consequently set aside;
- (iii) The amount deposited by the Appellant under the sale deed 13 April 2012 will remain deposited in the Court subject to the outcome of the Regular Civil Appeal No.121/2007;
- (iv) The Regular Civil Appeal No.121/2007 will be decided by the learned District Judge on its own merits and it is clarified that the above order is passed by consent of the parties to give fair opportunity to both the sides and the stand of the parties is not to be construed as a reflection on merits of their rival contentions;
- (v) Ad-interim order passed in Civil Application No.1482 of 2013 on 18 October 2013 directing the “parties to maintain status

quo in respect of the suit properties as available on today” to be continued for a period of six weeks from the date of appearance before the learned District Judge, Solapur. Further continuation, if any, of the interim order will be considered by the learned District Judge on its own merits;

- (vi) In case the Judgment and Decree passed by the learned Civil Judge is sustained, the learned District Judge will consider whether the permission obtained by the Appellants from the Competent Authority is sufficient or whether it is necessary for the Appellants to again seek permission from the competent authority;
- (vii) The parties will appear before the learned District Judge on 19 April 2017;
- (viii) Registry to communicate the order and send the record and proceedings back to the learned District Judge, Solapur, forthwith.

4. In view of the disposal of the second appeal, the civil application also stands disposed of accordingly.

(N.M.Jamdar, J.)