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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.180 OF 2015

WITH

CIVIL APPLICATION NO.354 OF 2015

Shankar Ananda Shipgude (since deceased)

through LRs. & Ors.

..Appellants.

V/s.

Dinkar Chandrappa Pawar & Ors.

..Respondents.

Mr.Surel Shah with Ms.Gauri Shah for the Appellants and Applicants.

Mr.S.S.Patwardhan with Mr.Chetan Patil for Respondent Nos.1 C & 1D & 2.

Coram : N.M.Jamdar, J.

Date : 3 April 2017

ORAL ORDER

Heard the learned counsel for the parties.

2. The Appellants have challenged the concurrent judgments and Orders passed by the learned Civil Judge, Panhala, District Kolhapur and the learned District Judge, Kolhapur dismissing the Suit and the Appeal filed by the Appellants.

2. The Appellants filed Regular Civil Suit No.51/1991 for specific performance of an agreement dated 12 February 1962. The learned Civil Judge did not accept the claim of the Appellants for specific performance of the agreement and dismissed the suit Civil by the Judgment and Order dated 13 February 2007. The Appellants filed Regular Civil Appeal No.101/2007 and the Appellate Court by the Judgment and Order dated 14 August 2014 confirmed the finding of the learned Civil Judge.

3. It appears that earlier a Regular Civil Suit No.50/1968 was filed by the Appellants for injunction. In that suit the Appellants took a defence that the Appellants are in possession of the suit property pursuant to the agreement dated 12 February 1962. The case of Respondents in that suit was that that Appellants had forcibly entered in the suit property, while it was the case of the Appellants that they were put into possession pursuant to the agreement of sale. The learned Civil Judge by Judgment and Order dated 27 July 1970 held that the possession of the Appellants will have to protected under Section 53A of the Transfer of Property Act, 1882.

4. It is an admitted position that the agreement dated 12 February 1962 on which the suit is based is not available. The Appellants have relied upon the decision of the learned Civil Judge in Regular Civil Suit No.50/1968 which refers to this deed. The learned District Judge in the present proceedings held that the

judgment rendered in Regular Civil Suit No.50/1968 will have to be looked into but the Appellants have failed to demonstrate that they are ready and willing to perform their part of the contract.

5. The learned counsel for the Appellants submitted that once a finding is rendered in Regular Civil Suit No.50/1968 that possession of the Appellants was protected under section 53A of the Transfer of Property Act, 1882, it is presumed that the essential ingredient in extending the protection of Section 53A that readiness and willingness stand established. The learned counsel submitted that once a the Judgment and Decree in Regular Civil Suit No.50/1968 was accepted as binding on the parties, again the question of readiness and willingness could not have been looked into.

6. I have gone through the copy of judgment rendered in Regular Civil Suit No.50/1968. The learned Civil Judge in that judgment has only recorded that considering the conduct of the parties, the theory of the Appellants that they have not forcibly entered into possession of the suit property and it was pursuant to the agreement dated 12 February 1962, is probable. There is no reference to any stipulation that the sale deed would be completed within three months after the permission from the competent authority is obtained. Therefore, the Appellants have to explain the time gap between 12 February 1962 till the present suit was filed on

5 April 1991. In the Complaint, span of 30 years is referred to in two lines that due to household problems and due to the fact that the property could not be legally transferred, the Appellants could not get the sale deed executed.

7. It has been the stand of the Appellants that it is because of the statutory condition that the sale deed could not be executed earlier and the embargo was lifted sometime in the year 1991. Having taken a specific stand to explain the delay, the Appellants were duty bound to lead cogent evidence thereto. No such evidence was led. Even the judgment rendered in Regular Civil Suit No.50/1968 does not refer to any such stipulation. Merely because the possession of the Appellant is protected under section 53A of the Transfer of Property Act, the Appellants cannot seek specific performance at any time as chosen in this case after three decades. Ultimately, the decree for specific performance is within the equitable jurisdiction of the Civil Court. The learned District Judge was right in taking note of the unexplained delay on the part of the Appellants of 30 years.

8. In the circumstances, there is no error in the discretion exercised by both the Courts in refusing to grant specific performance to the Appellants. No question of law arises in the Second Appeal. The Second Appeal is accordingly dismissed. In view of the dismissal of the appeal, the civil application also stands

dismissed.

9. At this stage, the learned counsel for the Appellants seeks continuance of the ad-interim relief that the Respondents shall not create third party rights. This statement was made by the learned counsel for the Respondents at the time of production of the matter. Considering the above aspects, I am not inclined to continue the injunction as the Appellants have adequate remedy under the Specific Relief Act even against the subsequent purchasers.

(N.M.Jamdar, J.)