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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***SECOND APPEAL NO.657 OF 2017
WITH
CIVIL APPLICATION NO.1223 OF 2017***

Late Sattu Bhau Mang (since deceased)
through LRs. 1A) Smt. Krishnabai
Sattu Mang & Ors. ..Appellants.

V/s.
Tukaram Shiva Patil ..Respondent.

Mr.Prashant Bhavake for the appellants.

Mr.Yatin Malvankar i/b. Tanaji Mhatugade for the respondent.

CORAM : A.M.DHAVALA, J.

DATE : SEPTEMBER 7, 2018

P.C.:-

Heard Mr.Prashant Bhavake, the learned counsel for the appellants and Mr.Yatin Malvankar, the learned counsel for the respondent.

2. The plaintiff-respondent had filed a suit for redemption of mortgage in which the defendants-appellants made a counter-claim for specific performance of agreement dated July 10, 2003. Both the Courts below by concurrent findings decreed the suit and the counter-claim was rejected. The decree for redemption of

mortgage was passed. With respect to counter-claim of specific performance of the agreement to sell it was held that the claim was time barred. The date for obtaining the sale deed was June 30, 2004 but it was altered to June 30, 2014 by manipulation. I find concurrent findings of the Courts that there was manipulation in the agreement regarding the date of the execution of the sale deed as June 30, 2004 and the same was altered to June 30, 2014. It is not disputed that the counter-claim will be time barred if the date is taken as June 30, 2004. A copy of the agreement Exhibit-69 is placed before me. It clearly shows manipulation. It was argued that the powers of section 73 of the Evidence Act do not permit to consider the alteration in the documents.

3. I find that, whether the document was manipulated or not, is a question of the fact and there is concurrent findings to that effect. I find no perversity or that inadmissible evidence has been considered and admissible evidence has been ignored. There is no proper explanation as to why the date of execution of the sale deed could be fixed after ten and half years. Considering the said facts, there is no scope for interference by way of second appeal.

4. As far as redemption of mortgage is concerned, the only point raised is that as there was an agreement to sell the plaintiff has no right to get mortgage redeemed. No such legal provision has been brought to my notice. The submission in this regard is having no sound and legal basis. In the event, no substantial question of law is involved. Hence the second appeal deserves to be dismissed and is accordingly dismissed.

5. In view of the dismissal of the second appeal, the civil application also stands disposed of.

6. At this stage, the learned counsel for the appellants seeks time to approach the Apex Court and seeks necessary orders. Hence, on request interim order, as already passed, is extended by six weeks subject to:

- (i) The appellants giving an undertaking that in case no favourable order is obtained /from the Apex Court, they will surrender the possession *suo motu*;
- (ii) The appellants will deposit the entire costs in the trial Court as might have been ordered.

(A.M.DHAVALA, J.)