

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

SECOND APPEAL NO. 211 OF 2018

Kerba Dhondiba Kumbhar	...	Appellant
V/s.		
Tukaram Gundu Kumbhar & Ors.	...	Respondents

- Mr.Pratap Patil for the Appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the Appellant.

2] This Second Appeal is preferred against the concurrent finding of the fact recorded by both the Courts below and thereby dismissing the Appellant's suit for declaration and injunction.

3] The entire case of the Appellant was based on the 'Mortgage-deed' (Exhibit-58), under which the property was mortgaged by the Respondent No.1 with the Appellant's father. However, both the Courts have rightly considered that the said document being unregistered, cannot be taken in to consideration.

4] As regards the relief of declaration, both the Courts found that Respondent No.1 has already sold the suit land to Respondent No.2 and Respondent No.2 in his turn has executed the sale-deed in favour of Respondent No.3. In view thereof, once the document of mortgage-deed is considered to be invalid, it follows that the Appellant has to prove his title to get the necessary relief or declaration in respect of the sale-deeds executed by Respondent No.1 in favour of Respondent No.2 and Respondent No.2 in favour of Respondent No.3, which he has failed to prove.

5] The submission advanced by learned counsel for the Appellant is that Respondent No.1 has admitted in his cross-examination that the Appellant is till today in possession of the suit property and in the year 1984-1994, he was sending the crop of the said land to the factory. According to learned counsel for the Appellant, both the Courts below have not considered this admission to grant the relief of injunction to the Appellant. However, in my considered opinion, this admission on the part of Respondent No.1, who has already sold out the suit land in favour of Respondent No.2 and Respondent No.2 has also sold out in favour of Respondent No.3 cannot be of any help to the Appellant. If such admission was given

either by Respondent No.3 or at the most Respondent No.2 with whom the said land is presently vested. Hence, the admission of Respondent No.1, who is no more concerned with the suit land would not be of any help to the Appellant.

6] In view thereof, no substantial question of law can be said to have been raised in this Second Appeal. The Second Appeal therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]