

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

***SECOND APPEAL (ST) NO. 797 OF 2018
WITH
CIVIL APPLICATION NO. 46 OF 2018***

Shri Sanjay Janardhan Gaikwad ... Appellant

Versus

Rajeev Dak Co-operative Housing ... Respondent
Society Ltd. & Anr.

Mr. Abhijit Anturkar I/by. Yogesh Patil for Appellant.
Mr. Udayan S. Jain for Respondent No.1.

***CORAM : N. M. Jamdar, J.
DATE : 16 January, 2018.***

ORAL ORDER

. By this Second Appeal the Appellant, who is an obstructionist, is challenging the concurrent judgments and orders passed by the learned Civil Judge, Senior Division, Pune dated 24th August 2016 and the order passed by the learned District Judge, Pune dated 1st January 2018.

2. The Respondent/Plaintiff filed a Special Civil Suit No. 1462 of 2009, which was decreed on 21st February 2012. Darkhast

Proceedings bearing No. 62 of 2013 were instituted, in which the Appellant filed obstructionist proceedings which were rejected by the impugned order.

3. Heard the learned Counsel for parties.

4. The learned Counsel for the Appellant relied upon an Agreement of Sale dated 10th March 2008 stated to be executed by the Judgment Debtor in his favour. It is his contention that the Judgment Debtor did not file written statement and since the Appellant has acquired rights in the property, an obstructionist proceeding should have been entertained and great prejudice will be caused to the Appellant.

5. Both the courts have noted that the so called Agreement dated 10th March 2008 is unregistered/notarized document. It is an admitted position that the Appellant is the nephew of the Judgment Debtor. What steps the Appellant has taken to get the Sale Deed executed from 2008 till date, have not been explained.

6. It is the contention of the learned Counsel for the Appellant that the Appellant enjoys protection of Section 53 (A) of the Transfer of Property Act, 1882. Both the courts have considered the contention and have rightly found that the case of the Appellant and the Agreement itself is bogus. The facts on record are enough to

demonstrate that the proceeding instituted by the Appellant are clearly at the behest of the Decree Holder and are abuse of process of law. Both the courts have considered the matter. No question of law arises. The question is whether the Appellant has proved his case. In the facts of the present case the answer is negative. On the other hand, the Apex Court has repeatedly cautioned the executing court to be on guard and to curtail abuse of the process of law and not to entertain collusive obstructionist proceedings designed to defeat the rights of a decree holder.

7. No question of law arises. The Second Appeal is dismissed.

(N.M. Jamdar, J.)