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

**SECOND APPEAL NO. 683 OF 2016
WITH
CIVIL APPLICATION NO.1358 OF 2016
IN
SECOND APPEAL NO. 683 OF 2016**

Sakru @ Soma Shid and ors ... Appellants.

V/s.

Sambhu Nana Gangurde(decesed)

Through Legal heirs ... Respondents

Mr. Sachin Gite, for the Appellants.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JUNE 2018.

P.C. :

1] Heard learned counsel for the appellants.

2] This appeal is preferred against the judgment and order dated 4.12.2015, passed by the Principal District Judge, Nashik, in Regular Civil Appeal No.545 of 2012, thereby allowing the appeal.

3] The said appeal was preferred by the respondents-original plaintiff against the judgment and decree dated 11.10.2012, passed by the 2nd Civil Judge Junior Division, Nashik in R.C.S.No.436 of 2008, thereby dismissing the suit filed by the original respondent.

4] The said suit was filed by the respondent for simpliciter

injunction claiming that he has been put in possession of the suit land on the basis of agreement which was executed on 7.9.1980. Since then he is in possession thereof. Appellants raised obstruction to his possession and also filed R.C.S. No.827 of 1985, which came to be dismissed. The appeal preferred against the said judgment and decree, bearing Civil Appeal No.326 of 1987 also came to be dismissed. Even then appellants were obstructing the possession of respondent, the respondent, therefore, was constrained to file present suit for simpliciter injunction.

5] The trial Court dismissed the suit, only on the ground that the said agreement has expired in the year 1990 and thereafter though the name of the respondent is appearing in the 7x12 extract upto 1994-95 and thereafter also in the year 2001-2002, the said agreement cannot be considered as legal in view of Section 36 of the Maharashtra Land Revenue Code.

6] The Appellate Court, has however, rightly considered that as regards to legality, validity of the said agreement, appellants had already challenged the same by filing R.C.S. No.827 of 1985 and that decision has gone against the appellants. In view thereof, the respondent was entitled to relief of injunction simplicitor, as granted by the Appellate Court, restraining appellants from dispossessing the respondent without following due process of law. No fault can be

found, therefore, in the impugned judgment and decree passed by the Appellate Court.

7] The Second Appeal, therefore, being without merit stands dismissed.

8] In view of dismissal of appeal, Civil Application No.1358 of 2016 does not survive and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]