

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 71 OF 2017
WITH
CIVIL APPLICATION NO. 1162 OF 2016

Vitthal Narayan Shinde (deceased) Thr LRs ...Appellants

Versus

Dattatray Narayan Athawale ...Respondent

Ms. Manjiri Parasnis, for the Appellants.

Mr. Shashikant B. Deshpande, for the Respondent.

CORAM: N. M. JAMDAR, J

DATED: 31 JANUARY, 2018

Oral Order:-

1. By this Second Appeal, the Appellants – obstructionist is challenging the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Pune and the learned District Judge, Pune, dismissing the obstructionist proceedings taken out by the Appellants.

2. The Respondent – decree holder had entered into an agreement for sale in respect of the suit property on 2 May, 1998. Suit was filed by the Respondent – Plaintiff on 16 December, 1999 and the Suit was decreed on 2 September, 2008 and the Defendant therein was directed to execute the sale

deed in favour of the Respondent – decree holder. When the suit was filed on 16 December, 1999, an injunction was granted on 28 December, 1999 and it appears that thereafter an agreement was executed by the judgment debtor in favour of the Appellant on 10 November, 2000. Based on this agreement, with a contention that the Appellants had rights under this agreement, obstructionist proceedings were taken out, which has been dismissed by the impugned order.

3. The learned Counsel for the Appellants submitted that the agreement executed in favour of the Appellants was a registered agreement, while an agreement in favour of the decree holder was an unregistered agreement and therefore it must prevail. This contention cannot be accepted in the facts of the present case. Firstly, the agreement in favour of the Appellants was in breach of the injunction issued by the Court. Both the Courts, after analysing the document, found that it was not a sale deed but an agreement. Though the learned Counsel for the Appellant has contended that the consideration was parted, that alone will not convert the document into a sale deed. Apart from this position, the suit filed by the Respondent – Plaintiff was decreed and specific performance was granted. The Appellants did not take any efforts even to get the agreement enforced, even assuming that the Appellants were not aware of the pending proceedings. Considering these facts, both the

Courts have held that there is no merit in the obstructionist proceeding. It appears that the obstructionist was put forth only to somehow defeat the execution of decree in favour of the original Plaintiff. No substantial question of law arises. Second Appeal is accordingly dismissed.

4. In view of dismissal of the Appeal, the Civil Application does not survive and is disposed of.

[N. M. JAMDAR, J.]