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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4111 OF 2016

Anand G. Chindarkar & Ors.

...Petitioners

V/s.

Chairman/Secretary, Shree Dattakrupa Co-op.
Housing Society Ltd. & Ors.

...Respondents

Mr.Rajesh Datar for the Petitioners.

Ms.R.C. Nichani I/b Ms.Deepa Kamath for the Respondent No.1.

Mr.S.H. Kankal, A.G.P. for the State – Respondent No.2.

CORAM : R.D. DHANUKA, J.

DATE : 6TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 3rd February, 2016 passed by the Competent Authority allowing the application of the society for deemed conveyance and also a Certificate issued under section 11 (5) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963, (for short the “said MOFA Act”).

2. The petitioners have filed this petition mainly on the ground that the mother of the petitioners had executed a separate Deed of Conveyance in respect of shop along with the land beneath of shop

and thus the application filed under the MOFA Act itself is not maintainable.

3. A perusal of the Deed of Conveyance dated 10th January, 1991 which is one of the such document annexed to the writ petition indicates that the mother of the petitioners had sold piece of land along with the structure in favour of different parties giving exclusive right therein. It was also one of the objection before the authority that since the Deed of Conveyance was already executed, there was no need of execution of Deed of Conveyance.

4. It appears that the shop owners who had purchased the shops along with piece and parcel of land formed a society and made an application for deemed conveyance.

5. Insofar as the submission of the learned counsel for the petitioners that the learned Competent Authority has not considered the objection of the purchaser is concerned, affidavit in reply filed by the petitioners indicates that no such objection was raised before the Authority. In my view, even otherwise since the mother of the petitioners had already sold her title in favour of the shop owners along with land, the petitioners are even otherwise not affected by the order of deemed conveyance. In my view, there is thus no merit in the submissions made by the learned counsel for the petitioners.

6. It is made clear that the suit filed by the petitioners against

his mother and others can be decided independently. If any issue of title is raised in the suit which is already filed by the petitioners, the issue of title shall be decided independently in the suit.

7. The petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)