

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

*SECOND APPEAL NO.357 of 2016
WITH
CIVIL APPLICATION NO.794 OF 2014
IN
SECOND APPEAL NO.357 of 2016*

Suryakant Dattatraya @ Datta
Ram Karangunkar ..Appellant/Applicant.

V/s.

Sudarshan Shantaram Karangutkar ..Respondents.

Ms.Tanaya Goswami for the Appellant/Applicant.

Mr.Sanskar Marathe for Respondent Nos.1, 3, 6 to 8, 10, 11 & 12.

CORAM : N.M. Jamdar, J.

DATED : 9 January , 2018.

ORAL ORDER :-

. The Appellant has challenged the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Deogad dated 17th March, 2009 in Regular Civil Suit No.16/01 and the learned District Judge, Sindhudurg dated 19th November, 2013 in Regular Civil Appeal No.58/2009. By the impugned Judgments and Orders, the suit and the appeal filed by the Appellant have been dismissed.

2. The Appellant has filed the suit for declaration that order passed in Diary Application No.1/1991 dated 15th November, 1995 is not binding on the Appellant and it is obtained by fraud. It was the case of the Appellant that though the Regular Civil Suit No.21/1942 was filed in partition of property which include the suit property when the suit was disposed of by way of compromise on 31st October, 1996. The said property was excluded from it. Both the Courts negated the contention of the Appellant and held that there was no fraud committed by the Respondents. The learned counsel for the Appellant reiterated the contention that the property stood excluded by way of the compromise. The certified copy of the proceedings / plaint of the Regular Civil Suit no.21/1942 was filed on record. The suit property was listed at serial no.1 in the present suit was at serial no.17 in the suit of 1948 and serial no.2 at serial no.186 in the said suit. If these properties were deleted by way of compromise, the description and the compromise pursis were the material documents. The Appellant did not produce these documents on record. Both the Courts therefore rightly held that there was no evidence that the suit property which form the subject matter of Regular Civil Suit No.21/1942 was excluded when the suit was decided. There is no error in this approach taken by both Courts for want of production of material documents.

3. The learned counsel for the Respondents pointed out that subsequent compromise entries have taken place in Revenue

records and the parties are put in possession of their respective properties.

4. Once the Appellant failed to produce the most cogent evidence on record, the case of the Appellant of fraud has no substance. There is absolutely no merit in this Second Appeal and long standing disputes between the parties have been settled and all parties have put in possession of their respective portion of the properties since long. No substantial question of law arises, Second Appeal is accordingly dismissed.

5. Civil application does not survive and is accordingly disposed of.

(N.M. Jamdar, J.)