

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 367 OF 2013

Mrs. Alka Bharat Choure ...Appellant

Versus

Mrs. Vimal alias Rajashree Bharat Bondre &
Ors ...Respondents

Mr. Deepak S. Shinde, for the Appellant.

CORAM: N. M. Jamdar, J.

DATED: 10 January, 2018

Oral Order:-

1. By this Second Appeal, the Appellant has challenged the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Phaltan dated 15 April, 2011 and the learned District Judge, Satara dated 9 April, 2013.

2. The subject matter of the proceeding is property gat no.164/4 situated at Munjwadi, Tal. Phaltan. A Suit was instituted for maintenance by the Respondent – Plaintiff bearing Suit No.182 of 1995. The Suit was decreed in the year 2003 and maintenance of Rs.2,000/- per month was granted to the original Plaintiff from 1 December, 1994 and the charge was kept on the property. Thereafter, the property was sold in execution and sale certificate was also issued in favour of the

Respondent – Plaintiff. The Appellant filed an application under Order XXI Rule 97 of Civil Procedure Code, 1908 in the Regular Darkhast No.67 of 2004, which both Courts have dismissed on the ground that the Appellant cannot maintain the said application. Both the Courts have concurrently held that the sale deed dated 26 August, 2009 cannot said to be legal.

3. Heard the learned Counsel for the Appellant.

4. The learned Counsel for the Appellant has reiterated the contentions advanced in the Courts below. Both the Courts have considered the material on record. Pursuant to a decree, the property was put to auction, sale was confirmed after following due procedure and sale certificate has been issued. Both the Courts have noted that, as a third party, the Appellant cannot seek to challenge the sale certificate in Darkhast proceedings. It appears that the Appellant had also filed a Suit for the same relief claiming 1/6th share. Considering this position both the Courts have denied the relief to the Appellant.

5. There is no substantial question of law. The Suit filed by the Appellant, if it is pending, will be considered on its own merits.

6. The Second Appeal is dismissed.

[N. M. JAMDAR, J.]