

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

**SECOND APPEAL NO.298 OF 2014
WITH
CIVIL APPLICATION NO.94 OF 2014**

Shri Prabhakar Digambar Swami ... Appellant

Vs

Madhukar Rajaram Dhere ... Respondent

...

Mr. Vinayak Kumbhar i/by Mr. N.V.Bandi Wadekar for the Appellant.
Mr. Swaroop Karade h/for Mr. Surel S. Shah for the Respondent.

CORAM : SANDEEP K. SHINDE J.
DATE : 26 MARCH, 2019

P.C. :

Heard learned counsel for the parties.

2 Appellant's suit for injunction and for re-conveyance of the suit land was dismissed and the Appellate Court affirmed the decree by judgment dated 26th September, 2011. It is against the decree in the Regular Civil Appeal No.311 of 2004, this Second Appeal is preferred by the original plaintiff.

3 Facts in brief are, that on 18th April, 1986, though plaintiff executed agreement to sell of the suit land, in fact it was

security and guarantee of debt obligation for the sum of Rs.4,500/- and not an outright sale. Plaintiff thus sought its re-conveyance and possession.

4 The evidence on record is otherwise. It shows pursuant to agreement to sale dated 18th April, 1986, plaintiff executed sale deed on 27th February, 1987 and put the respondent-defendant in possession of the suit land. Besides, plaintiff did not produce agreement on record. Evidence on record reveals that the respondent-defendant filed suit against the appellant herein in February, 1991 (Regular Civil Suit No.109 of 1991) wherein decree of perpetual injunction is passed on 12th July, 1991. In the Regular Civil Suit No.109 of 1991, finding is rendered that plaintiff therein (respondent-defendant herein) is in lawful possession of the suit land.

5 Thus, taking into consideration evidence on record and finding rendered in the Regular Civil Suit No.109 of 1991, both the Courts declined decree of re-conveyance and possession as sought by the appellant herein.

6 Appellant has essentially challenged findings of fact,
which is consistent with evidence on record.

7 The appeal, therefore, does not give rise to any
substantial question of law.

8 The appeal is dismissed with no order as to costs. All civil
applications are disposed of.

(SANDEEP K. SHINDE, J.)