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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.848 OF 2015
WITH
CIVIL APPLICATION NO.1815 OF 2015

Shri Laxman Sadashiv Falne and Ors. ... Appellants
Vs.
Usman Ahamad Patel and Ors. ... Respondents

Mr. Kashinath Krishna Jadhav for the Appellants.
Mr. Jayprakash S. Kapre for the Respondents.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 7th JANUARY 2020.

P.C.:

1 Heard the respective counsel. The appellant herein impugns the judgment and order passed by the District Judge, Satara in Regular Civil Appeal No.15 of 2014 passed on 7th August 2015 thereby upholding the judgment and order passed by the Civil Judge, Junior Division, Mahabaleshwar dated 10th May 2013 in Regular Civil Suit No.141 of 2010. At the outset, the learned counsel for the appellants submit that a suit for possession filed against the appellants was not maintainable. It is seen from the records that the plaint was amended. Earlier the suit was filed for

simplicitor injunction however, with the leave of the Court, the plaint was amended and the prayers were amended to the effect that the suit was for possession of the suit property which is half portion of Revision Survey No.146/3. It is pertinent to note that the defendant had not challenged the amendment to the plaint and neither the said issue was raised before the appellate Court. Hence, the same has attained finality. The appellant herein had not even referred to the compromise decree in R.C.S. No.55 of 1960 wherein there was a compromise decree in respect of the properties. As of today, the only substantial question of law raised by the appellant is that the appellate Court has misconstrued the provisions of section 49 of the Registration Act.

2 In fact, it is pertinent to note that the suit property in R.C.S. No.55 of 1960 was only in respect of 146/2 and 146/4A. Compromise decree was not in respect of the suit property having Survey No.146/3. It appears that there was no registration of the said property in favour of the original defendant i.e. the present appellant at the time of filing of the present suit and therefore, the appellate Court has rightly held that that in view of paragraphs 17, 18 and 19 of the judgment of the Apex Court in

the case of *K. Raghunandan Vs. Ali Hussain Sabir*¹, since the compromise decree was not acted upon and there was no registration of 146/3, it could be a matter of fresh cause of action in respect of Survey No.146/3. In fact, it is more than clear that the respondent herein is 50% title holder of the property at Survey No.146/3. However, written statement comprise of only a statement of denial and no specific plea was raised. Issues were framed on the basis of the pleadings of the parties. The second appeal being devoid of merits and no substantial question of law is involved, stands dismissed. Needless to say that with the dismissal of the suit interim relief granted by this Court stands vacated. Civil Application is also disposed of.

(SMT. SADHANA S. JADHAV, J.)

1. LEX(SC 2008 5 13