

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 325 OF 2021

WITH

INTERIM APPLICATION NO. 2947 OF 2021

1. Nimba Raghunath Pawar	]	
2. Sahebrao Raghunath Pawar	]	
3. Balasaheb Raghunath Pawar	]	
(Since deceased) Through his LRs.	]	
3.1 Kamlabai Balasaheb Pawar	]	
3.2 Gorakh Balasaheb Pawar	]	
3.3 Yuvraj Balasaheb Pawar	]	
3.4 Jyotsna Sahebrao Aher	]	
3.5 Aruna Shivaji Ahire	]	
3.6 Nirmal Pramod Ahire	]	... Appellants

V/s.

Indumati Adhik Pawar	]	... Respondent
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Mr.Harshad Inamdar a/w. Mr.Shantibhushan Nirmal i/b. M/s.Profess Law Associates for Appellants.

Mr.J.D. Khairnar for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 7th December 2021.

PC. :

1. By the present Second Appeal filed under Section 100 of Civil Procedure Code, the Appellants/obstructionists in Regular Darkhast No. 86 of 2000 have impugned Judgment and Order dated 8th February 2021 passed in R.C.A. No. 54 of 2018, by the learned District Judge-2, Malegaon, thereby

dismissed their Appeal with costs and confirmed the Order dated 10th May 2018 passed below Exh.149 in Regular Darkhast No. 86 of 2000, whereby the application filed by the Appellants for obstruction in execution of the said Darkhast was rejected with costs by the learned Civil Judge, Junior Division, Satana, District Nashik.

2. Heard Mr.Inamdar, learned counsel for Appellants and Mr.Khairnar, learned counsel for Respondent. Perused record.

3. Record reveals that, the predecessor-in-title of the Appellants, i.e. Raghunath Deoba Pawar, had executed a Sale-Deed on 6th November 1990 in favour of Shri Gulab Ramjan Khatik and had conveyed a house property bearing house No.230/A, City Survey No. 451 admeasuring about 56 sq. mtrs. for a valuable consideration of Rs.17,000/-. The said Sale-Deed was duly registered before the Sub-Registrar, Baglan, District Nashik. In pursuance of the said Sale-Deed Shri Gulab Khatik was put into possession of the suit property. Shri Gulab Khatik subsequently agreed to sale the suit property to Smt. Indumati Adhik Pawar, i.e. Respondent herein, by executing an Agreement of Sale dated 15th May 1994 for a valuable consideration of Rs.31,000/-. In pursuance of the said Agreement Smt. Indumati Pawar paid a sum of Rs.29,000/- as earnest amount to Shri Gulab Khatik. An amount of Rs.2000/- was due and payable and was to be paid to Shri Gulab Khatik at the time of execution of the Conveyance Deed. As said Shri Gulab Khatik failed to

perform his part of obligation of Agreement of Sale dated 15th May 1994, Smt. Indumati Pawar filed Special Civil Suit No. 13 of 1997 in the Court of Civil Judge, Senior Division, Malegaon, District Nashik. The Trial Court by its Judgment and Order dated 19th November 1999, decreed the said Suit in favour of Smt. Indumati Pawar i.e. Respondent/Original Plaintiff.

The Judgment and Decree passed in Special Civil Suit No. 13 of 1997 has been upheld by the Hon'ble Supreme Court by its Order dated 10th April 2017 passed in Special Leave to Appeal (C) No. 32132 of 2015.

4. In this background of admitted facts on record, the Respondent filed Regular Darkhast No. 86 of 2000 in the Court of Civil Judge, Junior Division, Satana, for execution of Judgment and Decree dated 19th November 1999 passed in Special Civil Suit No. 13 of 1997. Appellants filed Obstructionist Proceedings as contemplated under Order 21 Rule 97 of C.P.C. below Exh.149. The Trial Court conducted inquiry and determined the question involved therein as contemplated under Sub-Rule 101 of Order 21 of C.P.C. and rejected the said application with costs.

5. It was and is the contention of the Appellants that, the description of the suit property mentioned in the Conveyance Deed dated 6th November 1990 executed between predecessor-in-title of Appellants and Mr.Gulab Khatik differs from the one which has been claimed by Smt.Indumati Pawar in her suit for specific performance bearing Special Civil Suit No. 13 of 1997.

The Trial Court has rejected the said contention of the Appellant by its Order dated 10th May 2018 passed in Regular Darkhast No. 86 of 2000 and has recorded a finding that, the description of the suit property does not differ and it is the same suit property which has been mentioned in the Agreement of Sale dated 6th November 1990.

6. Feeling aggrieved by the said Order dated 10th May 2018 passed below Exh.149 in Regular Darkhast No. 86 of 2000, the Appellants preferred Regular Civil Appeal No. 54 of 2018. The Appellate Court after formulating necessary points for consideration, has dismissed the said Appeal with costs.

7. Perusal of Sale-Deed dated 6th November 1990 between the predecessor-in-title in title of Appellants and Shri Gulab Khatik, Agreement of Sale dated 15th May 1994 executed between Shri Gulab Khatik and Smt. Indumati Pawar and the pleadings in the plaint clearly indicate that, there is no variance or ambiguities in either mentioning the description of the suit property or its identification by any of the persons in the entire chronology of events. It appears to me that, the Appellants in connivance with the Judgment Debtor Shri Gulab Khatik (deceased) through legal heirs have filed the said application below Exh.149 under Order 21 Rule 97 of C.P.C. after the right of the Respondent herein has been upheld upto the Hon'ble Supreme Court by its Order dated 10th April 2017 passed in Special Leave to Appeal (C) No. 32132 of 2015.

The facts narrated herein above are admitted facts on record.

8. The proceedings initiated by the Appellants, according to me, are malicious proceedings and are initiated only to deprive the legitimate right of the Decree holder and none else. The Appellants were never precluded by any Court in appearing either at the stage of trial or at Appellate stage till the Judgment and Decree was upheld by the Hon'ble Supreme Court and it is, as and by way of clear afterthought the Appellants have preferred the said application below Exh.149 in Regular Darkhast No. 86 of 2000 and nothing else.

9. After perusing entire record, the Order dated 10th May 2018 passed below Exh.149 in Regular Darkhast No. 86 of 2000 and the Judgment and Order dated 8th February 2021 passed in R.C.A. No. 54 of 2018, I find that, both the Courts below have not committed any error either in law or on facts.

I find that no substantial question of law involved in the present Appeal.

Appeal being *dehors* of merits is accordingly dismissed.

10. In view of disposal of Appeal, Interim Application No. 2947 of 2021 does not survive and is accordingly disposed off.