

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.737 OF 2013

Subhash s/o Shriramlal Jaiswal,
Died, through L.Rs.
Sonal Subhash Jaiswal & anr.

... APPELLANTS

VERSUS

Ramgopal s/o Ramchandraji Darakh

... RESPONDENT

.....
Mrs. A.S. Rasal, Advocate for appellants
.....

CORAM : R. G. AVACHAT, J.

DATE : 6th JUNE, 2022.

PER COURT :

Heard Mrs. Rasal, learned counsel for the appellants. This Second Appeal has been preferred by original defendants in Regular Civil Suit No.974/2003. It was a suit for perpetual injunction restraining the appellants herein from disturbing possession of the plaintiff (respondent herein) over the suit property. The appellants herein preferred a counter claim for possession of the suit property on the ground that they were occupying the same as a tenant since 1980. It was

also their claim that the original owner of the suit property sold the same under an unregistered sale deed executed in their favour. A relief of possession was sought for by preferring a counter claim, contending that the original plaintiff dispossessed them pending the suit.

2. Both the Courts below have negated the claim of the appellants herein (plaintiffs in the counter claim).

3. Learned counsel for the appellants would submit that, the unregistered sale deed executed by the original owner was placed on record and it was duly proved as well. The recitals of the said document would indicate the appellants to have been in possession of the suit property, which was extensively damaged by the respondent – plaintiff. It was also submitted that, Municipal and other taxes were paid by the appellant and electric meter was also installed in the suit property.

4. Considered the submissions advanced. Whether the appellants (plaintiffs in the counter claim) were in possession of the suit property was necessarily a question of

fact. Both the Courts below have negated the said claim of the appellants. Admittedly, the son of the original owner has sold the suit property to the respondent herein. The appellants have based their claim for possession on the basis of an unregistered sale deed. The appellate Court, on appreciation of the evidence, came to the conclusion that the document has not been duly proved. No attesting witness to the document was examined. The vendor/ original owner passed away within three months of execution of the unregistered sale deed.

5. It is the claim of the appellants that, pending the suit the original plaintiff dispossessed them of the suit property. The first appellate Court has rightly observed that, had the appellants been really dispossessed of the suit property as alleged by them, it would have been natural on their part to make a complaint in that regard to the Court seized of the matter. No such complaint of dispossession pending the suit has ever been made. Even the order of temporary injunction was challenged in appeal without reference to the alleged dispossession. Both the Courts below, thus, negated the appellant's claim of having been in

possession of the suit property and have subsequently been dispossessed thereof. As such, no substantial question of law is involved in this Second Appeal. The Second Appeal is therefore, liable to be dismissed at the threshold. The same is, therefore, dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-