

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

**SECOND APPEAL NO. 311 OF 2020
WITH
CIVIL APPLICATION NO. 288 OF 2020
IN
SECOND APPEAL NO. 311 OF 2020**

Shri. Sitaram Balbhim Hasbe (deceased Thru

Lrs. 1) Smt. Sarubai Sitaram Asbe & Ors.

....APPELLANTS

V/S

Sau. Phulan Bhagwan Rakhunde & Ors.

....RESPONDENTS

Adv. Bhalchandra S. Shinde for the Appellants

None for the respondents.

CORAM : NITIN W. SAMBRE, J.

DATED : 18th NOVEMBER, 2022

P.C.:

1. The respondent's suit being RCS No. 51 of 2006 for grant of perpetual injunction based on the title and possession was decreed on 18/12/2014 which was confirmed by the Appellate Court i.e. District Judge-3, Baramati in Civil Appeal No. 34 of 2015
2. By the judgment impugned both the Courts below have concurrently held against the appellants as regards ownership and possession of the respondents towards the suit property.
3. The contentions of the counsel for the appellants are, the suit questioning the sale deed in favour of the respondents/decreed

holders is already subjudiced. He would further urge that the witness of the plaintiffs Mr. Dilip Rakhunde has deposed before the Tahasildar as regards possession of the appellants over the suit property.

4. As such, in this background, he would claim that the Court below committed an error in decreeing the suit holding the ownership and possession of the respondents.

5. I have appreciated the said submissions.

6. The ownership of the respondents is established by virtue the registered sale deed which of course is under challenge at the behest of the appellants in an independent suit which will be decided in due course. However, this Court cannot be ignorant of the fact that by virtue of the sale deed in favour of the respondents/plaintiffs, the title stood vested in them, which follows the possession.

7. Apart from above, the statement of witness of the respondent-Mr. Dilip Rakhunde in the mutation proceedings before the Tahasildar, cannot be said to be binding on the respondents in the present proceedings as the said statement was not part of the records and proceedings of Courts below and the respondents/plaintiffs were never confronted with the said

statement.

8. In this background, the present Second Appeal sans any question of law, which is against the concurrent findings

9. The appeal as such fails and stands dismissed.

10. Pending application also stands disposed of.

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(NITIN W. SAMBRE, J.)