

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

**SECOND APPEAL NO.257 OF 2020  
WITH  
INTERIM APPLICATION NO.1625 OF 2021**

|                                |                |
|--------------------------------|----------------|
| Dhakalu Bhau Gajarkar & Anr.   | ...Appellants  |
| Versus                         |                |
| Sushila Shrikant Savare & Ors. | ...Respondents |

Mr. Sudhir V. Sadavarte, for the Appellants.

**CORAM : MADHAV J. JAMDAR, J.  
DATED : 5<sup>th</sup> JUNE 2023**

**P.C. :**

1. Heard Mr. Sadavarte, learned counsel appearing for the Appellants.
2. The Appellants are the original Plaintiffs. The Appellants filed Special Civil Suit No.24 of 2011 inter alia seeking specific performance of oral promise to sell the suit property and for declaration that Sale Deed dated 24<sup>th</sup> January 2011 executed by Defendant No.1 in favour of Defendant Nos. 2 to 6 is illegal, sham and bogus. It is the contention of the Appellants that they are the tenants of the suit property and they

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are in the possession of the suit property. It is their contention that they are also in the possession of the adjoining property and therefore, entitled to purchase the land in accordance with the oral agreement.

3. Learned Trial Court has found that the Plaintiffs are not in possession of the suit property, the Plaintiffs failed to prove the said oral agreement and also that the Plaintiffs have failed to prove that the said Sale Deed dated 24<sup>th</sup> January 2011 is illegal, sham and bogus.

4. The present Appellants challenged the Judgment and Decree dated 16<sup>th</sup> September 2017 passed by the learned Trial Court before the learned Appellate Court and learned Appellate Court has dismissed the Appeal by Judgment and Decree dated 31<sup>st</sup> December 2018.

5. The present Second Appeal is filed impugning the Judgment and Decree passed by the learned Trial Court as well as of the learned Appellate Court.

6. It is the contention of Mr. Sadavarte, learned counsel appearing for the Appellants that the Appellants are in possession of the suit property and they are the tenants of the suit property and they are also cultivating the adjoining land. He therefore submits that the Appellants have preferential right to purchase the said land. Both the Courts have

concurrently held that as far as the tenancy rights are concerned, in the tenancy proceedings, it has been held that the Appellants are not the tenants. The Appellants challenged the said order of tenancy authorities including order of Maharashtra Revenue Tribunal by filing Writ Petition No.4006 of 2009 and said Writ Petition was dismissed by order dated 11<sup>th</sup> August 2009. Thereafter, this Court has passed further order dated 24<sup>th</sup> August 2009 in said Writ Petition holding that the Respondents can take possession of the suit property from the Appellants and accordingly possession was received by the Respondents.

7. The factual position on record clearly shows that both the Courts have concurrently held that the Plaintiffs are not in possession of the suit property, the Plaintiffs failed to prove the said oral agreement and also that the Plaintiffs have failed to prove that the said Sale Deed dated 24<sup>th</sup> January 2011 is illegal, sham and bogus. Mr. Sadavarte failed to point out how the Appellants are entitled for preferential right to purchase the said land. Therefore, there is no substance in the substantial questions of law raised by Mr. Sadavarte on behalf of the Appellants.

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8. For the above reasons, the Second Appeal is dismissed, however with no order as to costs. In view of the dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]