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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 146 OF 2017
WITH
INTERIM APPLICATION NO. 18561 OF 2022
IN
SECOND APPEAL NO. 146 OF 2017**

Dhyanu Dhondi Kole Patil (since decd.
Thr. Lrs) Shankar Dhondi Kole Patil and
Ors ... Appellants/Applicants

vs.

Sonabai Laxman Patil(deceased)
(deleted) Kalabai Vishnupant Gaikwad
and Ors ... Respondents

Mr. Bhooshan Mandlik a/w. Chetan Patil, for Appellants/Applicants.

CORAM : GAURI GODSE, J.

DATED : 3rd JULY 2024

ORDER:

1. Heard learned counsel for the appellants. This Second Appeal challenges concurrent judgments and decrees dismissing the appellants' suit for specific performance.

2. Learned counsel for the appellants submits that the entries in the revenue record indicated that the plaintiffs' predecessor in title,

i.e. Dnyanu, was cultivating the suit property. Learned counsel for the appellants submits that the plaintiffs were always in possession and cultivating the suit property. He further submits that Laxman had executed the suit agreement in favour of the plaintiffs for transferring his undivided share to the plaintiffs as they were already cultivating the suit property. He submits that the question with regard to plaintiffs already in possession was proved by the plaintiffs by producing mutation entry. He submits that both the courts have not correctly appreciated the documents at Exhibit 130 and 144, which clearly indicates that the plaintiffs were already in possession of the suit property. He thus submits that the findings recorded by both the courts on the point of possession and refusal to grant the prayer for specific performance amounts to mis-appreciation of facts and evidence on record. He, therefore, submits that the Second Appeal raises substantial question of law on mis-appreciation of facts and evidence.

3. I have considered the submissions made by the learned counsel for the appellants. Perused the papers. Both the courts recorded the concurrent findings of fact and disbelieved the theory of execution of an agreement for sale as well as plaintiffs being in possession of the suit property. The question with regard to the

readiness and willingness of the plaintiffs on the performance of the suit agreement and payment of earnest amount is also disbelieved by both Courts. The finding with regard to the suit being within limitation is also held against the plaintiffs.

4. A perusal of the reasons recorded by the trial Court appears to be after appreciating all the documentary as well as oral evidence on record. The First Appellate Court has re-appreciated the documentary as well as oral evidence on record and confirmed the findings recorded by the Trial Court.

5. The issue raised with regard to the possession of the suit property cannot be said to relate to the suit agreement. Admittedly, the suit property is an ancestral joint family property, and according to the plaintiffs, Laxman had agreed to transfer his undivided share in the suit property. Hence, documentary evidence in the form of revenue records, even if recorded names of the plaintiffs, it cannot be said that the same would relate to the terms and conditions of the suit agreement. Once it is admitted that the suit property is an ancestral joint family property of the parties, they cannot claim exclusive possession of the suit property. Thus, the arguments of the learned counsel for the appellants would require re-appreciation of facts and the evidence, which is not permissible under Section

100 of the Civil Procedure Code, 1908.

6. The second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed. In view of disposal of the Second Appeal, pending Interim Application No. 18561 of 2022 is dismissed as infructuous.

(GAURI GODSE, J.)