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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 821 OF 2017
WITH
CIVIL APPLICATION NO. 1628 OF 2017
IN
SECOND APPEAL NO. 821 OF 2017**

Shri. Hari Govind Kaingade
(Deceased) through LRs

.....Appellants

Vs.

Shri. Ramchandra Tukaram Nilaje

.....Respondent

Mr. Tanaji Mhatugade for the appellant
Mr. Drupad Patil i/b Mr. Pavan Patil for the respondent

CORAM : GAURI GODSE, J.

DATE : 26th AUGUST 2024

ORDER:

1. This second appeal is preferred by the original plaintiffs to challenge the Judgment and Decree passed by the first Appellate Court. The appellants had filed suit for an injunction restraining the respondents from disturbing the appellants' joint possession over the suit property. The suit was initially decreed, however, in an appeal preferred by defendant nos. 1, 3 to 5 and 7, the Trial Court's decree is

set aside. Hence, this second appeal by the original plaintiffs.

2. Learned counsel for the appellants submitted that there is a registered sale deed executed in favour of the plaintiffs which is not under challenge. He therefore submits that the first Appellate Court has erred in setting aside the Trial Court's decree in favour of the appellants. He supported the Trial Court's decree on the ground that the sale deed executed in favour of the appellants would be a sufficient ground to pass a decree for injunction to protect the plaintiffs possession over the suit property. He therefore submits that the second appeal would require consideration on the question of law as to whether plaintiffs would be entitled for a decree of injunction on the ground that there is a sale deed in favour of the plaintiffs.

3. I have considered the submissions made on behalf of the appellants. The Trial Court had passed a decree for injunction restraining the respondents from obstructing the appellants' joint possession over the suit property. A perusal of the issues framed by the Trial Court and the reasons recorded by the Trial Court indicates that there is no finding recorded in respect of division of the property and the plaintiffs being in exclusive separate possession of the suit

property.

4. It is not in dispute that the appellants have purchased undivided share in respect of the suit property. Once it is not in dispute that appellants have not purchased any divided share in respect of the suit property, they would not be entitled to seek any injunction against other co-owners. In the absence of any findings with regard to a separate independent possession of the plaintiffs, they would not be entitled to seek any injunction against co-owners. The first Appellate Court has observed that the appellants would at the most be entitled to seek partition and separate possession. However, they would not be entitled to seek injunction against the co-owners. I do not find any illegality or any perversity in the reasons recorded by the first Appellate Court.

5. Once it is not disputed that an independent separate share is not purchased by the appellants and there is no finding or supporting evidence that the appellants are in separate possession, they would not be entitled to any injunction as prayed. It is the plaintiffs' contention that they seek protection from interference to their lawful 1/4th possession as there is obstruction to their possession. Thus, such an

injunction against co-owners cannot be granted, in the absence of any specific case regarding obstruction to any common use of the suit property. The Appellate Court has also observed that the plaintiffs have sold some part of the suit property prior to filing of the suit, however, they claimed injunction for the entire property. Thus, the first Appellate Court rightly held that the plaintiffs being subsequent purchasers were required to seek partition and they were not entitled to seek injunction against the co-owners, on the ground of being in lawful possession of 1/4th share. Hence, the grounds raised on behalf of the appellants would not require any consideration by this Court.

6. Second appeal does not raise any question of law. Hence, the second appeal is dismissed.

7. In view of dismissal of the second appeal, Civil Application No. 1628 of 2017 is dismissed as infructuous.

[GAURI GODSE, J.]