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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 909 OF 2017
WITH
CIVIL APPLICATION NO. 1939 OF 2017**

Shri Ankush Gundu Govekar ... Appellant

Vs.

Shri Sameer Sadasjov Govekar ... Respondent

Mr. Drupad S. Patil for the Appellant.

Mr. Yogesh Rawool a/w. Mr. S. S. Redkar and Ms. Nidhi Gupta for
the Respondent.

CORAM : GAURI GODSE, J.

DATE : 8th OCTOBER 2024

ORDER :

1. This appeal is preferred by the defendant to challenge the concurrent judgments and decrees directing the defendant to hand over possession of the suit property to the respondent ("plaintiff"). The suit was filed based on plaintiff's title.

2. Learned counsel for the appellant submitted that admittedly the plaintiff's father had handed over possession of the property to the defendant. He submitted that the defendant was put in possession pursuant to an agreement for sale for consideration. He

thus submits that the defendant's possession was required to be protected to enable the defendant to file a suit for specific performance. He submits that both the courts have not considered the issue regarding the defendant's right to protect his possession as he was put in possession pursuant to an agreement for sale executed by the plaintiff. He thus submits that the Second Appeal would require consideration on the aforesaid ground which raises substantial question of law.

3. To examine the contention raised on behalf of the appellant, I have perused the impugned judgments. The plaintiff's title is not in dispute. So far as defendant's contention of being in possession pursuant to an agreement for sale is concerned, both the courts disbelieved the same, as the defendant failed to produce any supporting evidence.

4. A perusal of the reasons recorded by both the courts indicate that the defendant had relied upon a receipt produced at Exhibit 78 in support of his submission that part consideration amount was paid to the plaintiff's father. Both the courts disbelieved the authenticity of the said receipt.

5. A perusal of the reasons recorded by both courts indicate that

defendant failed to prove any concluded contract for seeking specific performance. In the absence of any concluded contract between the parties the defendant would not be entitled to protect his possession. Unless specific terms of the contract between the parties is proved by the defendant, coupled with his readiness and willingness to comply his part of the contract, the defendant would not be entitled to seek any protection as contemplated under Section 53-A of the Transfer of Property Act, 1882.

6. There is no counter claim filed by the defendant seeking specific performance of the contract. I do not find any illegality or perversity in the reasons recorded by both the courts. Once the plaintiff's title is accepted and the defendant failed to prove his right to retain the possession, the decree for possession cannot be faulted.

7. Thus, in view of the concurrent findings of facts, the Second Appeal would not require any consideration. The submissions made on behalf of the appellant does not raise any substantial question of law.

8. Hence, the Second Appeal is dismissed.

9. In view of disposal of the Second Appeal, Civil Application No. 1939 of 2017 is disposed of as infructuous.

[GAURI GODSE, J.]