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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 61 OF 2021
WITH
INTERIM APPLICATION NO. 2941 OF 2021
IN
SECOND APPEAL NO. 61 OF 2021**

Balu Shankar Patil (since decd thr. Lrs) ... Appellants/Applicants
Smt. Kalpana Balaso Patil and Ors

vs.

Bajirao Tatoba Patil and Ors ... Respondents

Mr. Pradeep D. Dalvi, for Appellants.

CORAM : GAURI GODSE, J.

DATED : 18th JULY 2024

ORDER:

1. Heard learned counsel for the appellants. This Second Appeal is filed to challenge the concurrent judgments and decrees dismissing the appellants' suit for an injunction to protect their possession.

2. Learned counsel for the appellants submitted that the appellants are claiming rights in the suit property on the ground that it is their ancestral property, and they claim undivided shares in the

suit property.

3. He submits that the appellants, having undivided shares in the suit property, are entitled to protect their possession. Learned counsel further submits that both the courts failed to take into consideration that the appellants, being co-sharers of the suit property, were entitled to protect their possession. He submits that both the courts have erred in not correctly appreciating the facts and evidence on record. Hence, the Second Appeal requires consideration.

4. I have considered the submissions made on behalf of the appellants. Both the courts have concurrently held that the appellants failed to prove their exclusive possession over the suit property. The defendants claim rights in the suit property based on the sale deed executed by plaintiff no.1 in their favour. The plaintiffs also do not dispute the sale deed in favour of the defendants. Both courts do not accept the claim of plaintiffs that the defendants were carrying out unauthorised construction. A perusal of the reasons recorded in the impugned judgments indicates that both courts have examined the facts and evidence on record and dismissed the suit. Both the courts have correctly held that in the absence of any partition determining the separate share of the parties, the plaintiffs

would not be entitled to seek any decree for an injunction on the ground that they are in exclusive possession of the suit property. I do not find any illegality or perversity in the reasons recorded by both courts.

5. The grounds sought to be argued would require re-appreciation of the facts, which is not permissible under section 100 of the Civil Procedure Code, 1908. The second Appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of the dismissal of the Second Appeal, pending Interim Application No. 2941 of 2021 is dismissed as infructuous.

(GAURI GODSE, J.)