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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 610 OF 2017**

Shankar Satappa Kamble and Ors ... Appellants

vs.

Bhikaji Tukaram Bhopale and Ors ... Respondents

Mr. Suresh M. Kamble, for Appellants.

CORAM : GAURI GODSE, J.

DATED : 31st JULY 2024

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the original plaintiffs to challenge the concurrent judgments and decrees against the plaintiffs in the counter claim filed by the defendants. The plaintiffs' suit seeking an injunction to protect their possession is dismissed, and the counter claim of the defendants is allowed, granting a decree of injunction restraining the plaintiffs from obstructing the defendants' possession over the suit property.

2. Learned counsel for the appellants submitted that the plaintiffs were put in possession pursuant to the agreement for sale executed in the year 1977-78 on payment of the entire consideration amount. He submitted that it is the plaintiffs' case that they were put

in possession in terms of an agreement for sale, and since then, they have been cultivating the suit property. He further submitted that copies of the 7/12 extract produced on record indicated that the plaintiffs were in possession of the suit property. Hence, the plaintiffs were entitled to protection of their possession in view of Section 53A of the Transfer of Property Act, 1882 (**'said Act'**).

3. Learned counsel for the appellants, thus, submits that both courts erred in dismissing the plaintiffs' suit by ignoring the entries in the revenue record. He further submitted that once the plaintiffs were put in possession pursuant to the agreement, they were entitled to protect their possession as per the doctrine of Part Performance under Section 53A of the said Act. Hence, the defendants were not entitled to any decree for an injunction. He, thus, submits that the Second Appeal raises the aforesaid questions of law.

4. I have considered the submissions made on behalf of the appellant. Perused the papers of the Second Appeal. It is not in dispute that the defendants are owners of the suit property. The plaintiffs are claiming rights only based on the pleadings that there was an agreement for sale in their favour. However, admittedly, the document of the agreement for sale has not been produced on

record. It is unclear from the pleadings of the plaintiffs whether there was any concluded contract in favour of the plaintiffs or that any attempt was made on behalf of the plaintiffs to perform their part of the contract and get the contract specifically performed in their favour. Thus, in the absence of any such pleading and proof regarding the contract in their favour, the plaintiffs would not be entitled to seek any protection under Section 53A of the said Act.

5. Learned counsel for the appellants submitted that the plaintiffs had produced a photocopy of the agreement in their favour. However, they were unable to produce the original agreement as, according to the plaintiffs, the same was produced before the revenue authority. I do not find any substance in the said argument as the First Appellate Court has recorded in paragraph no. 17 that the plaintiffs' witness admitted in cross-examination that there was no difficulty on his part to produce the original document. Thus, the photocopy produced was not accepted in evidence for want of satisfaction of the parameters under Section 65 of the Indian Evidence Act.

6. So far as the revenue record relied upon by the parties is concerned, the findings recorded by both courts indicated that the defendants' names appear in the cultivation column. Thus, both

courts have held that even the revenue records are not sufficient proof to hold that the plaintiffs are in possession of the suit property. Hence, in the absence of any proof of an agreement in favour of the plaintiffs, they would not be entitled to seek any injunction against the owners of the property. Since the plaintiffs failed to prove execution of any agreement in their favour, the defendants would be entitled to a decree for injunction as prayed by them on the ground of title.

7. The reasons recorded by both the courts are on a thorough examination of the pleadings as well as evidence on record. I do not see any illegality or perversity in the reasons recorded by both courts.

8. The second appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

(GAURI GODSE, J.)