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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 248 OF 2024

WITH

INTERIM APPLICATION NO. 8037 OF 2024

IN

SECOND APPEAL NO. 248 OF 2024

Prabhakar Chintaman Mahadik

.....Appellant

Vs.

Chaya Murlidhar Mahadik

.....Respondent

Mr. Aniruddha A. Garge with Mr. Jintendra Oak for the appellant

Mr. Sanskar Marathe for respondent

CORAM : GAURI GODSE, J.

DATE : 13th JUNE 2024

ORDER:

1. This second appeal is filed to challenge the concurrent Judgments and Decrees passed in favour of the respondent directing the appellant to hand over the possession of the suit property. The plaintiff filed a suit based on the title to the suit property.

2. Learned counsel for the appellant submitted that the suit property originally belonged to the appellant's husband, and without any valid document of transfer of the property in the plaintiff's name, the suit is decreed by the Trial Court and confirmed by the first Appellate Court. He submits that in view of section 54 of The Transfer of Property Act, 1882, read with section 17 of The Registration Act, 1908, the documents claimed by the plaintiff for claiming exclusive ownership cannot be termed as valid transfer documents. In support of his submissions, he relied upon the decision of the Hon'ble Apex Court in the case of *Shakeel Ahmed Vs Syed Akhlaq Hussain*¹. He submits that the Hon'ble Apex Court has settled the legal principles with regard to valid transfer and held that an embargo put on the registration of a document would not override the statutory provisions so as to confer the title based on an unregistered document. He further submitted that the said decision was placed before the first Appellate Court by way of a purshis, however, the same is not even referred to by the Court. He, therefore, submits that for want of valid transfer of title in favour of the plaintiff, she is not entitled to any relief as claimed. He thus submits

¹ Civil Appeal No. 1598 of 2023

that the second appeal raises the aforesaid substantial question of law and, hence, requires consideration.

3. I have considered the submissions made by learned counsel for the appellant. Perused the papers. It is not in dispute that the suit property was originally allotted in the name of the plaintiff's husband. It is further also not in dispute that a transfer letter was issued by the Maharashtra Housing and Area Development Authority ("MHADA") in favour of the plaintiff. All the documents with regard to the transfer of the suit property in favour of the plaintiff are placed on record. Admittedly the appellant has neither challenged the allotment in the name of the plaintiff's husband nor has challenged the documents of transfer executed by MHADA in favour of the plaintiff. All the documents regarding the transfer of the suit property in the name of the plaintiff are produced on record and examined by both Courts. There are specific findings recorded by the Trial Court with regard to the original allotment in the name of the plaintiff's husband and subsequent documents for the transfer of the property in the name of the plaintiff, including sanction order at Exhibit 70 along with a

certificate at Exhibit 71.

4. A specific finding is recorded by the Trial Court that all the formalities as required under MHADA (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (“the said Rules”) are followed for transfer of the suit property in the name of the plaintiff. With regard to the relevant provisions of the said Act, the transferred documents are examined by the Trial Court and specific findings are recorded, thereby accepting the title of the plaintiff over the suit property. It is not even the case of the appellant that the transfer effected in favour of the plaintiff is at any time challenged by the appellant. The aforesaid findings are confirmed by the first Appellate Court by re-examining all the documents on record, including the relevant regulations under the said Act for transfer.

5. The decision of the Apex Court relied upon by the learned counsel for the appellant deals with a suit which was filed based on the power of attorney, agreement to sell along with an affidavit, and Will executed in favour of the respondent before the Hon’ble Apex Court. In the context of said documents of title, the legal principles are settled in

the said decision with the reference to section 54 of The Transfer of Property Act, read with sections 17 and 49 of The Registration Act. In the present case, the transfer of the suit property is under Regulation 20 of the said Rules by following regulations under the said Rules. Once the transfer procedure under the MHADA Act is not under challenge, I do not see any reason to disbelieve the plaintiff's case with regard to ownership. Even otherwise, the respondent has not pleaded any source of title with regard to suit property and/or any authority to retain the suit property.

6. The findings with regard to the plaintiff's title are correctly examined by both the Courts in view of relevant provisions of the MHADA Act, which are also referred to in the impugned judgments.

7. Hence, the second appeal does not raise any substantial question of law for the consideration of this Court. Hence, the second appeal is dismissed.

8. At this stage, learned counsel for the appellant seeks a stay of the execution and implementation of the impugned decree to enable

the appellant to approach the Hon'ble Apex Court. The execution of the decree is stayed for a period of 12 weeks from today, subject to the appellant not creating any third-party rights.

9. In view of the dismissal of the second appeal, Interim Application No. 8037 of 2024 is dismissed as infructuous.

[GAURI GODSE, J.]