



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 SECOND APPEAL NO. 347 OF 2024

**INDUMATI MANMOHAN KULKARNI AND ANR
VERSUS
BHAIRAVNATH SANTARAM KOKATE AND ANR**

Ms. M. V. Narwade h/f Mr. V. P. Narwade, Advocate for the appellants

CORAM : R. M. JOSHI, J.

DATE : 10th JANUARY, 2025

PER COURT :-

1. This appeal is filed under Section 100 of the Code of Civil Procedure taking exception to the concurrent judgment and decree passed by Trial Court as well as First Appellate Court in R.C.S. No. 159/2005 and R.C.A. No. 85/2003.
2. Parties are referred to as 'plaintiffs' and 'defendants' for the sake of convenience.
3. Plaintiffs filed suit claiming to be owner in respect of the suit property bearing Gut No. 173/3 situated at Kumbheja, Taluka Paranda. It is the contention of the plaintiffs that defendant no.1 sold the suit property to them vide registered sale deed No. 1762/2003 dated 23/10/2003 after receiving entire consideration. He also claims that he was put in to the possession of the suit property. Since defendants

started causing obstruction to his possession, suit bearing R.C.S. No. 159/2005 came to be filed. The defendants appeared in the suit and filed written statement. It was claimed by the defendants that suit property is ancestral property and there is no partition effected thereof. It also claimed that the transaction in question is money lending transaction and not transaction of sale.

4. Before the Trial Court both sides led evidence. Trial Court decreed the suit granting injunction against the defendants. This order is confirmed by the First Appellate Court.

5. There is no dispute about the fact that defendant no.1 has executed sale deed in question in respect of the suit property in favour of the plaintiffs. The fact as it appears from the judgment of the Trial Court as well as First Appellate Court shows that defendant no.1 was the *karta* of the family of the defendants. There is further no denial of the fact that he executed registered sale deed and received consideration of Rs. 81,000/-. Once there is a registered sale deed and the defendant has not challenged the sale deed and it is not set aside, the same is binding on the defendants.

6. In the suit for declaration and injunction the plaintiffs were required to prove their title and possession and also to show that there is

obstruction caused by the plaintiffs defendants to his possession of the suit property. In instant case the evidence on record sufficiently proves these requirements. This Court therefore finds the both Courts below have correctly appreciated the pleadings and evidence on record. Thus, no perversity is found therein. For want of involvement of substantial question of law, second appeal stands dismissed.

(R. M. JOSHI, J.)

ssp