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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 758 OF 2016**

Smt. Phulabai Basappa Magdum ... Appellant
vs.
Monappa Baburao Chougule and Ors ... Respondents

Ms. Latika Kabad and Ms. Kavita Vijapure i/b. D.V. Sutar for
Appellant.

**CORAM : GAURI GODSE, J.
DATED : 6th MAY 2025**

ORDER:

1. Heard learned counsel for the appellant.
2. This appeal is preferred by the original plaintiff no.1 to challenge the concurrent judgments and decrees dismissing the suit for injunction protecting her possession.
3. Learned counsel for the appellant submits that pursuant to the agreement for sale executed by defendant no. 1 in favour of husband of plaintiff no.1, they were put in possession and they continued in possession of the suit property. She submits that the plaintiffs relied upon the assessment extracts, electricity bills,

municipal tax receipts and water charges to support their contention that they were in possession of the suit property. She submits that the plaintiffs are in long standing possession pursuant to the agreement for sale executed in their favour. Hence, the plaintiffs are entitled to protect their possession under Section 53A of the Transfer of Property Act, 1882 (**'the said Act'**). She submits that during the subsistence of the agreement for sale in their favour, the plaintiffs are entitled to protect their possession. She, therefore, submits that the second appeal would raise substantial questions of law on protection available to the plaintiffs in view of Section 53A of the said Act.

4. Learned counsel for the appellant had sought time to verify whether the prayer for declaration was made in the suit. Hence, to enable the learned counsel for the appellant to verify the copy of the plaint, the second appeal was adjourned. Learned counsel for the appellant submits that she has verified the copy of the amended plaint. She submits that the prayer for declaration was deleted by carrying out amendment. She therefore submits that the suit proceeded only for the prayer for injunction to protect the plaintiff's possession. She submits that considering the long standing possession of the appellant pursuant to the agreement for sale, the appellant would be entitled to protect her possession. She therefore

submits that the second appeal would require consideration on the ground of protection available to the plaintiffs under Section 53A of the said Act.

5. I have perused the papers of the second appeal. The plaintiff has relied upon the documentary evidence in the form of assessment extract, electricity bills, municipal tax receipt and water tax receipt to support her submissions that the plaintiffs are in possession of the suit property. The plaintiffs seek to protect their possession on the ground that defendant no.1 had executed agreement for sale in favour of husband of plaintiff no.1. Plaintiff no.2 is son of plaintiff no.1. However, he is not a party to this second appeal. Both the courts have examined the evidence on record and disbelieved the plaintiffs' contention that the plaintiffs were in possession pursuant to the agreement for sale. The plaintiffs had also raised contention that plaintiff no.1 is the owner of the suit property. Hence, the issue with regard to the plaintiff's ownership was also considered by the trial court. The first appellate court re-examined the evidence on record and held that the plaintiffs failed to prove that they were in lawful possession of the suit property. The plaintiff's claim to be in possession pursuant to the agreement as claimed by them was disbelieved by both the courts. The oral evidence and the admissions given by the plaintiff no.1 regarding

her admissions in the earlier Regular Civil Court No. 41 of 2011 was also considered by both the courts. There is no dispute that the plaintiffs had initially filed Regular Civil Suit No. 41 of 2011 in which application to protect possession was rejected. Thus, the plaintiffs claim of being in possession was not accepted even in earlier round of litigation.

6. Learned counsel for the appellant also relied upon filing of Regular Civil Suit No. 116 of 1999 by respondent no.1. She submits that the documents relied upon in the said suit also supported the plaintiff's contention that they were in possession of the suit property. The ground raised on behalf of the plaintiffs based on Regular Civil Suit No. 116 of 1999, was not accepted as a sufficient ground to hold that the plaintiffs were in lawful possession of the suit property. Admittedly, the said suit is dismissed in default. Thus, filing of Regular Civil Suit No. 116 of 1999 would not support the plaintiff's contentions that they were in lawful possession of the suit property.

7. Even if the plaintiffs' contention regarding execution of agreement in their favour is accepted, there is nothing shown by the plaintiffs that any act is done in furtherance of the agreement for sale for getting the agreement specifically performed in their favour. Hence, in the absence of any readiness and willingness on the part

of the plaintiffs to act in furtherance of the agreement relied upon by them, they would not be entitled to seek any protection under Section 53A of the said Act. Both the courts have concurrently disbelieved the plaintiff's claim for seeking injunction to protect their possession.

8. I do not find any illegality or perversity in the reasons recorded in the impugned judgments. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of dismissal of the second appeal, the pending applications are disposed of as infructuous.

(GAURI GODSE, J.)