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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 667 OF 2015

WITH

CIVIL APPLICATION NO. 382 OF 2016

CIVIL APPLICATION NO. 1404 OF 2015

Vilas Vithoba Jagdale and Another ... Appellants/Applicants

Vs.

Nivrutti Bhimrao Jagdale and Others ... Respondents

Mr. Kuldeep Nikam a/w. Mr. Prasad Avhad for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 27th MARCH 2025

ORDER :

1. Heard learned counsel for the appellants. This appeal is preferred by the plaintiffs to challenge the concurrent judgments and decrees passed by the first appellate court setting aside the trial court's decree in favour of the appellants. The trial court had decreed the suit and granted injunction restraining defendant nos. 2 and 3 from forcibly dispossessing the plaintiffs without following due process of law. The said decree was challenged by defendant nos. 2 and 3 and their appeal is allowed. Thus, the injunction decree passed by the trial court in favour of the appellants is set aside.

Hence, this appeal by the plaintiffs.

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2. Learned counsel for the appellants submits that defendant no. 1 sold the suit property to the appellants vide registered sale deed dated 4th October 1995. He submits that based on the sale deed the appellants' names were entered in the revenue record. He submits that however defendant nos. 2 and 3 started disturbing the appellants' possession. Hence, the suit was filed.

3. Learned counsel for the appellants submits that defendant nos. 2 and 3 are sons of defendant no. 1. Defendant nos. 2 and 3 are claiming exclusive right in the suit property based on the compromise decree in the suit interse between the defendants. He submits that the plaintiffs were unaware about the compromise decree and the sale deed was executed in favour of plaintiffs and possession was handed over. He however submits that the plaintiffs were put in possession in view of the valid registered document in their favour and thus defendant nos. 2 and 3 would not be entitled to dispossess the plaintiffs without following due process of law.

4. He further submits that though the compromise decree in favour of defendant nos. 2 and 3 was prior in time, the plaintiffs were never put to notice about the said decree. He thus submits that the plaintiffs are bonafide purchasers for value without notice and thus they are entitled to protect their possession. He submits

that defendant nos. 2 and 3 cannot be permitted to dispossess the plaintiffs without following due process of law. He thus submits that the second appeal would raise substantial questions of law on the right created in favour of the plaintiffs pursuant to the registered sale deed.

5. I have perused the papers of the second appeal. The trial court passed the decree for injunction based on the registered sale deed in favour of the plaintiffs by holding that the alienation by defendant no.1 was for legal necessity. However, the appellate court held that the suit was not filed on the ground that the alienation was for legal necessity. The first appellate court relied upon the compromise decree dated 28th January 1990 passed in the two suits interse between the defendants. By way of compromise decree the suit property is allotted to defendant nos. 2 and 3 exclusively. Thus, in view of the compromise decree defendant no. 1 had no right, title or interest that could have been transferred to the plaintiffs.

6. The first appellate court thus relied upon the compromise decree based on which the suit property was allotted to the share of defendant nos. 2 and 3. Thus, the first appellate court held that defendant no. 1 had no right to alienate the suit property. There is no dispute that by way of compromise decree the suit properties are

allotted to the share of defendant nos. 2 and 3. Thus, the sale deed executed by defendant no. 1 would not in any case bind defendant nos. 2 and 3.

7. There is nothing on record which would indicate that the plaintiffs pleaded and proved that the alienation was for legal necessity and the sale deed was executed after necessary inquiry and due diligence on the part of the plaintiffs. It is well established legal principle of law that if a purchaser enters into a contract for purchasing a joint family property on the ground of legal necessity, the burden is upon the purchaser to plead and prove that the alienation was for legal necessity.

8. In the present case nothing is pleaded and proved that alienation was on the ground of legal necessity. Even otherwise, defendant no. 1 had no right, title or interest to transfer the property to the plaintiffs after the compromise decree dated 28th January 1990. Hence, the subsequent alienation in favour of the plaintiffs would not transfer any right, title and interest in their favour. Thus, in the absence of any valid title in favour of the plaintiffs they would not be entitled to any injunction against the true owners i.e. defendant nos. 2 and 3.

9. So far as protection of possession is concerned, the plaintiffs were unable to prove that they were put in possession pursuant to the sale deed and thus the first appellate court disbelieved the plaintiffs case that they were in lawful possession of the suit property. Thus, in the absence of any specific findings on the plaintiffs to be in valid possession pursuant to any valid document they would not be entitled to any injunction against the true owners. Thus, I do not find any error or illegality in the reasons recorded by the first appellate court.

10. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

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

[GAURI GODSE, J.]