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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4433 OF 2014
(Arising out of SLP (C) No. 17533 of 2010)

Smt. Leela Krishnarao Pansare and others .....Appellants

Versus

Babasaheb Bhanudas Ithape and others .....Respondents

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted.

2. Being aggrieved by the judgment delivered in First Appeal No. 1138 of 2009 by the Bombay High Court at Aurangabad on 14.1.2010, the appellants have approached this Court by way of this appeal.

3. The facts giving rise to the present litigation, in a nutshell, are as under :

The appellants had filed a suit against the present respondents for a declaration to the affect that the agreement to sell entered into between the appellants and the respondents should be cancelled and the appellants should be put in possession of the land in question, which had been agreed to be sold in pursuance of the agreement to sell dated 17.08.1995. Certain undisputed facts in the case are to the effect that the aforesaid agreement to sell had been entered into and in pursuance of the said agreement, possession of the land in question had been handed over to the respondents upon a payment of Rs. 1 lac, which was part of the consideration. The consideration for sale was Rs.10 lacs. The remaining amount of Rs.9 lacs was to be paid in two installments of Rs. 4 lacs and Rs. 5 lacs each. Rupees 4 lacs were to be paid by the respondents by the end of 30.01.1996 and the remaining Rs.5 lacs were to be paid at the time of execution of the sale deed.

It was also agreed that before execution of the sale deed the appellants had to get an entry "Deosthan Inam" removed from the revenue record. The land in question was shown as "Deosthan Inam"

and the said entry was to be deleted as it was said on behalf of the appellants that the land in question was not "Deosthan Inam" land and needful was to be done by the appellants for removal of the said entry.

It is also not in dispute that a sum of Rs.1 lac had been paid by the respondents at the time of agreement to sell was entered into and the appellants had not done anything to get entry showing "Deosthan Inam" in respect of the land in question removed from the revenue record.

The suit filed by the appellants had been dismissed on 06.09.2008 and being aggrieved by dismissal of the said suit, First Appeal No. 1138 of 2009 had been filed in the High Court by the present appellants. The said appeal has been dismissed and therefore, this appeal has been filed challenging validity of the judgment delivered in First Appeal No.1138 of 2009.

4. We had heard the learned counsel appearing for the parties and had also perused the relevant record.

5. In our opinion, the High Court should have discussed the evidence in detail, but somehow the evidence has not been properly

discussed or re-appreciated by the High Court while dismissing the appeal

6. Upon perusal of the impugned judgment delivered by the High Court, it is clear that the entire sale consideration had not been paid but at the same time it is also an admitted fact that the appellants did not get the entry with regard to the "Deosthan Inam" deleted. There is no discussion about the efforts made by the appellants for getting the said entry deleted. The High Court has also not discussed the consequences of non deletion of the said entry and the efforts made by the appellants for not getting it deleted. Similarly, there is no definite finding as to how much consideration was paid and at what time or stage.

7. Even the amount payable by the respondent towards purchase price had not been paid in full to the appellants and the said thing has not been properly discussed.

8. We find that the relevant evidence has neither been discussed nor been properly appreciated by the High Court. It was very much necessary for the High Court to decide whether the appellants and the respondents had performed their respective duties, which they

had to perform in pursuance of the agreement with regard to sale of the land in question.

9. In our opinion, without appropriate appreciation of the evidence, the High Court should not have dismissed the appeal and therefore, we allow the present appeal and remand the matter to the High Court so that after hearing the concerned parties, the High Court would take a fresh decision. As the agreement with regard to sale of the land had been executed before several years, we hope that the High Court would hear and decide the appeal as expeditiously as possible.

10. The impugned judgment is quashed and set aside with no order as to costs.

…….....J.
(ANIL R. DAVE)

….....J.
(DIPAK MISRA)

New Delhi
April 07, 2014