

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.387 OF 1993

Chaturabai Tatyare,
 Residing at & post Khavaspur,
 Taluka Sangola, Dist. Solapur. **APPELLANT**

...V E R S U S...

S.A. stands dismissed
 as against Res. No.1
 as per Order dt.
 9/4/2010.

1] Bandu Tatyappa Jare,
 Residing at Khavaspur,
 Taluka Sangola, Dist. Solapur.

2] Ambubai Bapurao Mane.

S.A. stands dismissed
 as against Res. No.3
 as per Order dt.
 9/4/2010.

3] Madhukar Bapurao Mane.

Nos.2 and 3 residing at
 Khavaspur, Taluka Sangola,
 District Solapur.

..... **RESPONDENTS**

 Mrs. A.R.S. Baxi, Advocate for Appellant.
 None for Respondents.

CORAM: R.K. DESHPANDE, J.

DATE: 30th JULY, 2015.

ORAL JUDGMENT

1] On 31.01.1984 the Trial Court recorded the finding that the plaintiff has established her possession over the suit property as an agricultural tenant and therefore, Regular Civil Suit No. 175 of 1980 was decreed and the injunction was granted. In Regular Civil Appeal No. 31 of 1980, the Lower Appellate Court has reversed the decree passed by the Trial Court and the suit has been dismissed on

25.02.1993. Hence, the original plaintiff is before this Court in this second appeal.

2] The suit was filed simplicitor for grant of permanent injunction, restraining the defendant from interfering with the possession of the plaintiff over the suit property. The suit is based upon possession only. The Trial Court recorded that the plaintiff has established her possession, whereas the Lower Appellate Court has reversed this finding and the suit has been dismissed. The second appeal was admitted by this Court on 16.08.1993 on the following substantial question of law.

Whether Civil Court could examine the validity of the proceedings under the Tenancy Act?

3] With the assistance of the learned counsel appearing for the appellant, I have gone through the judgment delivered by both the Courts below, the documents placed on record of the Trial Court and the record and proceedings. The finding of the Lower Appellate Court that the possession of the defendant No.1, the owner of the property, is based upon the document dated 20.11.1959 at Exh.67, wherein the Agricultural Lands Tribunal recorded the statement of the tenant Tatyana Jare that he is not willing to purchase the land bearing Survey

No.106/12 owned by the defendant No.2. The order was therefore, passed holding that the purchase of the said land by the tenant has become ineffective. Consequently, the Additional Tahsildar/Agricultural Lands Tribunal passed an order dated 14.10.1980 under Section 32-P of the Bombay Tenancy and Agricultural Lands Act (for short the said Act) holding that the tenant has already surrendered the possession prior to recording his evidence and therefore, the possession of land is restored to the landlord under Section 32-P(2)(b) of the said Act. This document is at Exh.77 on the record of the Trial Court. The Trial Court relied upon the subsequent entries in the revenue records which were in the name of tenant Tatya Jare to hold that the plaintiff being his heir has established her possession. The Trial Court further recorded the finding that the order dated 14.08.1980 passed under Section 32-P(3) will have to be ignored because the tenant had died by the time when the order was passed.

4] Be that as it may, the finding of possession of the tenant over the suit is reversed by the Lower Appellate Court, taking possible view of the matter, is based on the evidence available on record, which does give rise to any substantial question of law. The reference to the tenancy proceedings is only to find out the factum of possession, which does not amount to examining the validity of proceedings. The substantial question of law framed does not arise.

5] In the result, the second appeal is dismissed. No order as to costs.

JUDGE

NSN