

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)**

SECOND APPEAL NO. 263 of 2013

Shri Pandurang Damodar Bhoir
age : 76 years, Occ. Agriculture,
R/o. Juchandra, Tal. Vasai,
Distt. Thane, ..

APPELLANT
Org.Pltf.

.. Versus ..

Shri Baddruddin Abbasbhai Patel,
Age : 64 years, Occ. Business,
R/o. Richmand Town, Phase-2,
Babhola, Chulne Road, Tal. Vasai,
Distt. Thane . ..

RESPONDENT
Org. Deft.

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Mr. R. R. Salvi, Advocate, for appellant.
Mr. Tushar Kadam, Advocate for Respondent

CORAM : R.K.Deshpande, J.
DATED : 6th JULY, 2015.

ORAL JUDGMENT

1] On 26th March, 2015, this Court had issued notice for final disposal of the matter.

Both the courts below had dismissed the suit on the

ground that the civil suit claiming permanent injunction restraining the defendant from interfering with the possession of the plaintiff over the suit property is barred by Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Court, therefore, framed the question as to whether the suit can be said to be barred by Section 85 of the said Act?

Admit.

Heard finally by consent of the learned counsels appearing for the parties.

2] It is not in dispute that the Courts below had not gone into the merits of the controversy involved in the matter. The suit has been dismissed by the trial Court and the decision is confirmed by the appellate Court on the ground that such a suit is barred by Section 85 of the said Act.

3] Both the learned counsels agree on the proposition that such a suit claiming simpliciter permanent injunction cannot be said to be barred by Section 85 of the said Act. They submit that if issue of tenancy arises out of the pleadings of the parties, then the matter can be referred to the tenancy Court and the decision in the suit need to be waited for that.

4] The learned counsel for the plaintiff submits that the suit is simpliciter for grant of injunction on the basis that the plaintiff is in possession of the suit property. Both the Courts below have not recorded any finding as to whether the plaintiff is in possession of the suit property or not. The Courts below have committed an error of law in holding that such a suit is barred by Section 85 of the said Act.

5] In the result, the second appeal is allowed. The judgment and decree dated 04.10.2010 passed in Regular Civil Suit No. 155 of 2008 by the trial Court, as has been confirmed in Civil Appeal No. 7 of 2012 by the lower appellate Court on 20.12.2012, are hereby quashed and set aside. The matter is remitted back to the trial Court to decide the suit on its own merits in accordance with law by giving the parties an opportunity of leading evidence in support of their rival claims.

The parties to appear before the Trial Court on 27th July, 2015. No order as to cost.

(R.K.Deshpande, J.)

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