

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 993 OF 2007

Kisan Savala Pol and Ors.

.....Appellants

V/s.

Ganpati Bala Pol, Deceased through
his legal heirs

.....Respondents

* * * * *

Mr. V.P. Sawant i/by. Mr. Prabhakar Jadhav, Advocate for the appellants.

Mr. Dilip Bodake, Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

27TH MARCH, 2015.

P.C. :

1). This Second Appeal is preferred against the concurrent findings of facts by the Courts below. The respondents filed Regular Civil Suit No. 538 of 1997 for an injunction simplicitor to restrain the appellants from disturbing their possession of the suit property being Gat no. 1084 and 1086 claiming to be it's owners. The appellants had contested the suit disputing both, the title and possession of the suit property, by the respondents. The trial Court by its judgment and order dated 16th February, 2001 decreed the suit with the findings that (i) respondents are the owners of the suit property, (ii) they are in

possession of the suit property and (iii) the appellants are attempting to disturb their possession of the suit property. Being aggrieved by the judgment and decree of the trial Court, the appellants preferred Regular Civil Appeal No.11 of 2001 to the District Court. By the judgment and order dated 26th November, 2007 the District Court dismissed the appeal by upholding two of the findings of the trial Court. The District Court confirmed the findings as regards the possession of the suit property by the respondents and the attempts on the part of the appellants to disturb that possession. It reversed the finding of the trial Court on the title to the suit property. The District Court has held that the respondents have failed to establish their title to the suit property.

2). The appellants had claimed to be the tenants in respect of the suit property and as such in possession thereof. Though, extensive arguments have been advanced at each stage of the proceedings on the issue of possession, perusal of the record shows that the issue is no longer res-integra. It has already been decided by a competent Court. The appellants had instituted Tenancy Case No. ER/N/IL in the Court of Tahsildar, Karad because they wanted to purchase the suit land as agricultural tenants under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948. By the order dated 11th September, 1985

the Tahsildar, Karad had decided the proceedings in favour of the appellants. Being aggrieved by the decision, the respondents had preferred Tenancy Appeal No. 101 of 1985 to the Collector. The appeal was decided in favour of the respondents. Being aggrieved by the order of the Collector, the appellants had preferred Revision bearing No.MRT/NS/S/III/1/1986 TN-10/B/189/1986 to the Maharashtra Revenue Tribunal. The Tribunal dismissed the revision petition, holding that the appellants are not the tenants of the suit properties and that possession of the suit properties is with the respondents. The respondents have produced certified copies of orders of the revenue authorities, as well as, Maharashtra Revenue Tribunal. In view of this finding of fact by the Competent Court, the appellants cannot be allowed to argue contrary thereto. Thus, there is no substantial question of law arising for consideration of Court in the appeals.

3). Mr. Sawant, the learned Advocate appearing for the appellants, sought to argue relying upon the entries in the 7/12 extracts, that the names of the appellants are being shown therein as the tenants in respect of the suit properties. These documents produced are for the period subsequent to the year 1986 when the Maharashtra Revenue Tribunal held that possession of the suit properties is with the respondents. It is not the case of the appellants

that, at any point of time thereafter the appellants secured the possession of the suit properties from the respondents. Hence, the Second Appeal is dismissed.

(SMT. R.P. SONDURBALDOTA, J)