

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 33 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 61 OF 2015
IN
SECOND APPEAL NO. 33 OF 2015

Balaso Sadu Patil and Another

.....Appellants

: V/S :

Shivaji Nana Patil and Others

.....Respondents

* * * * *

Mr. Surel S. Shah, Advocate for the appellants.

Mr. Rahul Walvekar, Advocate for the respondents.

Coram :- Smt. R.P. SondurBaldota, J.

9th March, 2015.

P.C. :-

1). The appellants are the original plaintiffs. They filed Regular Civil Suit No. 361 of 2009 for a declaration that they are the tenants in respect of the suit property which is an agricultural land and for an injunction to restrain the respondents from disturbing their possession. The respondents filed an application for rejection of the plaint under Order 7 Rule 11 Civil Procedure Code contending that the suit filed for declaration is barred by Section 85 of the Bombay Tenancy and

Agricultural Lands Act (for short “BT & AL Act”). The trial Court considered the application, allowed the same and dismissed the suit. The appellant then preferred Regular Civil Appeal No. 311 of 2013 to the District Court. By the order dated 24th September, 2014 the appeal was dismissed. Therefore, the present Second Appeal has been filed.

2). Mr. Shah, the learned Advocate appearing for the appellant submits that both the Courts below were in error in holding that the suit is barred in view of Section 85 of the BT & AL Act. According to him, the Courts below have failed to appreciate prayer (c) to the plaint while considering the bar under Section 85 of the BT & AL Act. It is his argument that, prayer clause (c) would save the suit from the bar. The other argument of Mr. Shah is that, the Courts below also ignored Section 85A of the BT & AL Act. By prayer clause (c), the appellant seeks a permanent injunction to restrain the respondent from disturbing his possession of the suit property. Since the substantive relief in the suit is of declaration of agricultural tenancy, prayer clause (c) becomes a relief consequential to the relief of declaration. It, therefore cannot save the suit.

3). Section 85A of BT & AL Act provides for referring of the dispute of agricultural tenancy to the appropriate authorities only when the question of agricultural tenancy arises as a question incidental to the

main question in the proceedings. In the case on hand, the question of agricultural tenancy itself is the main question. Therefore, the same cannot be resolved in the present proceedings. Hence, there is no infirmity whatsoever in the impugned order. There is no substantial question of law arising for consideration of the Court. The Appeal is therefore dismissed.

4). In view of dismissal of the Second Appeal, Civil Application No. 61 of 2015 does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)