

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 436 OF 2015
Along with
CIVIL APPLICATION NO. 954 OF 2015**

Shri Rajaram Namdeo Khairnar
since deceased-

Through his heirs and legal
representatives-

Smt.Gangubai Rajaram Khairnar .. Appellants / Applicants

Versus.

Nanaji Tulshiram Deore. .. Respondent

Mr.Sudam Kale, for Appellants / Applicants.
Nanaji Deore – Respondent in person.

**CORAM: N.M. JAMDAR, J.
Wednesday, 30 March 2016.**

Oral Order :

The Appellants challenge the concurrent Judgment and Decree of the Civil Judge Junior Division, Satana and the District Judge Malegaon Nashik.

2. The suit was filed for injunction against the Respondent in respect of the suit property by the Appellants on the basis that the Appellant had a lease in his favour executed by Defendant No.2. It was the case of the Appellant that the Appellant was also a protected / agricultural tenant of the land and inspite of this

position, a sale deed was executed by the Defendant no.2 in favour of the Respondent. In this suit the Respondent filed a counter claim and sought possession of the suit land on the basis of the sale deed. The learned Civil Judge came to the conclusion that the Appellant had failed to show any right in respect of the land and dismissed the suit by order dated 29 August 2012. The counter claim filed by the Respondents was allowed and inquiry was directed to determine mesne profits. The Appeal filed by the Appellant was dismissed by the learned District Judge on 2 May 2015.

3. Thereafter the present second appeal is filed. The Appeal and the Civil application were moved for urgent orders on 14 March 2016 on the ground that possession warrant will be issued. The matter was kept today and it was directed that the possession of the Appellants will not be taken. The learned counsel for the Appellants states that what was stated on 14 March 2016 was an error and the possession of the suit land was already taken on 3 March 2016.

4. I have heard the learned counsel for the Appellants. As far as the right of the Appellants is concerned, the Appellants have two-fold case. Firstly, a right is asserted on the basis of a lease deed executed by Defendant No.2. However this lease has already expired by efflux of time. Another stand taken by the Appellants which is conflicting with the first stand, that the Appellant is an agricultural tenant. As regards this assertion the issue of tenancy

was referred to the Tahsildar, in the year 1985. Thereafter the proceedings have taken place before the revenue authorities and reached this Court. This Court upheld the conclusion reached by the revenue authorities that the Appellant is not an agricultural tenant. This position has therefore, reached finality.

5. As regards the title of the Respondent to the suit land, it cannot be questioned. He has purchased the property by way of sale deed and therefore, his counter claim has been rightly allowed. The learned District Judge has rightly observed that this is the case where rightful owner has been deprived of enjoying the property by the Appellant having no valid right. The litigation was instituted just to hold on to the property. Frivolous and conflicting stands are taken.

6. The learned counsel for the Appellants then submitted that the directions as regards mesne profits be set aside. It is not possible to set aside this direction which is just and equitable. The Appellant, knowing fully well he has no right to the property, has enjoyed the property keeping out the rightful owner since long. Therefore just returning the property back will not meet the ends of justice.

7. In the circumstances, no substantial question of law arises. The Appeal is dismissed. Civil Application also stands disposed of.

(*N.M. JAMDAR, J.*)