

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

SECOND APPEAL NO. 319 OF 2008

Smt.Sakhubai Yeshwant Ghule,
R/o Talsangi, Tal. Mangalwedha,
Dist. Solapur.

... Appellant

v/s

1. The State of Maharashtra
2. Nattathaya Tukaram Sarade,
(since deceased through Lrs.)
- 2A. Jijabai Nattathaya Sarade & ors.

3. Sitaram Kallappa Dodake,
R/o. Talsangi, Tal. Mangalwedha,
Dist. Solapur.

... Respondents

Mr.Rohit Sonavane i/by Miss Nayana Thatte for the appellant.

Ms.Poonam Bhosale, A.G.P for Resp. No.1.

Mr.S.G.Kudle for Resp. No.3.

CORAM: N.M. JAMDAR, J.

DATED : 1 APRIL 2016

ORAL ORDER:

The appeal for admission is pending since the year 2008. By an order dated 12 November 2009, it was made clear that no further time will be granted. The appeal was dismissed for default on 16 December 2009. Thereafter it was restored by an order dated 17 December 2011. Again the appeal was dismissed for

default on 30 January 2012. Compilation of pleadings was not placed on record. The appeal was restored by this Court on 20 March 2012. The appeal was again dismissed by an order dated 11 October 2012 and restored on 17 February 2016.

2 When the matter is called out today, time is sought on behalf of the advocate for the Appellant. I have refused to grant any further adjournment in the appeal and with the assistance of the learned counsel, I have gone through the decisions of both the Courts.

3 The suit was filed by the Appellant for a declaration that the sale deed dated 1 July 1994 effected by the Defendant No.2 in favour of Defendant No.3 is null and void and for grant of temporary injunction. The learned Civil Judge, Senior Division, Pandharpur, by the judgment and decree dated 25 September 2001 was pleased to decree the suit. An appeal was filed by the Respondents to District Court, Pancharpur, which appeal came to be allowed by the impugned order.

4 The learned District Judge has come to the conclusion that the contention of the Respondents that the sale deed is contrary to the provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, and is null and void cannot be accepted in view of Section 41 of the Act of 1961. The learned District Judge has also held that the Commissioner, Collector or Tribunal is the authority under Section 27 of the Act. Section 40 of the Act also

authorizes the Collector to summarily evict a person wrongfully in possession of any such land after an enquiry. Nothing is shown as to how this conclusion is reached by the learned District Judge regarding the provisions of Section 41 of the Act of 1961 which excludes the jurisdiction of the Civil Court, is not correct.

5 As regard the decree regarding permanent injunction, the Appellate Court has assessed the evidence including 7/12 extracts, order passed by the Sub-Divisional Officer, Pandharpur, dated 8 February 1994 in favour of the Respondents herein. The learned District Judge has also held that nothing was produced by the Appellant to show that the Appellant is in possession of the property. This is a finding of fact based on appreciation of evidence. It is not possible in second appeal to interfere with the finding of fact which is otherwise not perverse.

6 In the circumstances, there is no merit in this appeal. The appeal is accordingly dismissed.

(N. M. JAMDAR, J.)