

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

***SECOND APPEAL NO. 155 OF 2015  
ALONG WITH  
CIVIL APPLICATION NO. 323 & 324 OF 2015***

Shri Rama Posha Bhagat  
(since deceased, through legal heirs)  
and others.

... Appellants/Applicants

v/s

Mahadu Ganu Gharat & ors.

... Respondents

Mr.Rohit D. Joshi for the appellants/applicants.

***Coram: N.M. Jamdar, J.***

***Dated: 21 June 2016***

***ORAL ORDER:***

The Appellants challenge the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Panvel and the learned District Judge, Raigad at Alibag, decreeing the suit of the Respondent No.1 Plaintiff and dismissing the appeal. The learned Civil Judge granted a declaration that the trees standing on the western bund of Survey No.58/2, adjacent to the suit land, are owned and possessed by the Respondents-Plaintiffs and restrained the Appellants from interfering with the possession of the Respondents-Plaintiffs over the trees and warkas land of 30 gunthas.

2 Both the Courts concurrently found that the Respondents-Plaintiffs were in possession of the property and proceedings under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948, had culminated in their favour.

3 During these proceedings, a reference was made to the Tenancy Authority, as the Appellants claimed that, as regard 3 gunthas of land, they were tenants of the property from the erstwhile landlady Sharadabai. The Respondents-Plaintiffs claimed that they had become tenant of the suit property and the reference was answered in favour of the Respondents-Plaintiffs. It was held that as per the provisions of Section 32-G of the Act, the Respondents-Plaintiffs had become owners.

4 Learned counsel for the Appellants submitted that the outcome of Reference order, whereby the decision is given under section 32-G, is under challenge in a revision which is pending. He submitted that the Respondents-Plaintiffs had not led any cogent evidence to demonstrate their possession.

5 As regard the possession over the suit property is concerned, it is the question of fact. Both the parties led oral evidence and examined witnesses which were cross-examined. Parties also placed documentary evidence on record. Both the Courts, on appreciation of oral and documentary evidence came to the conclusion that the

Respondents-Plaintiffs are in possession. No fundamental error is shown as regard this finding. Therefore, even if the tenancy proceedings are kept out of consideration, the finding of fact that the Respondents-Plaintiffs are in possession still remains, which cannot be set aside under Section 100 of the Code of Civil Procedure. Therefore, the order of injunction cannot be disturbed. In case the Appellants succeed in the revision proceedings and it is ultimately held that the Appellants are tenant of three gunthas of land, out of the suit property, which is in their claim, the Appellants can always take appropriate steps to enforce their right.

6 No substantial question of law arises. Second appeal is dismissed.

7 In view of disposal of the appeal, the civil applications do not survive and are disposed of.

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