

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

***SECOND APPEAL NO. 191 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 344 OF 2016***

Shiva Dadu Shetake & ors.

... Appellants/Applicants

v/s

Ganpati Bhairu Aragade
(since deceased, through Lrs.)
& ors.

... Respondents

Mr.Rahul Walvekar for the appellants/applicants.

Mr.V.B.Rajure for respondent No.1 A.

Coram: N.M. Jamdar, J.

Dated: 29 June 2016

ORAL ORDER:

The Appellants challenge the concurrent judgment and order passed by the learned Civil Judge, Senior Division, Kolhapur, dated 12 March 2014 and the judgment and order passed by the learned District Judge, Kolhapur, dated 8 September 2015, dismissing the suit and appeal filed by the Appellants.

2. The suit was filed by the Appellants/Plaintiffs for injunction

restraining the Respondents from interfering with the possession of the property and subsequently for a declaration that the order passed in Tenancy Revision No.1110 of 1990, is illegal and not binding.

3. Heard learned counsel for the parties.

4. Learned counsel for the Appellants submitted that, during the tenancy proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, Defendant No.1 i.e. the tenant, remained absent and therefore the property reverted back to the original landlord who sold the property by a registered sale deed dated 14 July 1988 to the Appellants. He submitted that, since the Defendant tenants had lost their rights, the order passed in the revision application by the tenancy authorities holding that the proceedings under Section 32G(3) were not complied with, is incorrect.

5. Both the Courts have considered the order passed by the tenancy authorities. The tenancy authorities rendered a finding that even if the tenant does not remain present on a particular date, a methodology is provided under the proviso to Section 32G(3) of the Act, and it is only after this methodology is complied with, that it can be held that the tenant has lost his right to purchase the property. There is no error on the part of both the Courts in relying on this decision of the tenancy authorities. The tenancy authorities have

correctly relied on the proviso to Section 32G(3). Before declaring that the tenant who on tillers day acquired right on a property has lost the right, procedure envisaged has to be followed. Since this mandatory procedure was not followed, Defendant No.1 tenant had not lost his right as a tenant and the Respondent landlord, who was divested of his title by virtue of the provisions of the Tenancy Act, could not have sold the property to the Appellant. That being the position, there is no question of grant of any injunction in favour of the Appellants or to give any declaration that the order passed in the Revision Application No.118 of 1998 is illegal. No question of law arises, much less any substantial question of law.

6. Learned counsel for the Appellants submitted that there are certain proceedings pending before the revenue authorities which may be decided on their own merits. As far as the controversy in the present proceedings is concerned, it stands concluded by the dismissal of this second appeal. If there are any entirely unconnected proceedings pending before any other authorities, it is needless to state that, such unconnected proceedings should be decided on their own merits.

7. The appeal is dismissed. The civil application is disposed of.

(N. M. Jamdar, J.)