

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 879 OF 2015
WITH
CIVIL APPLICATION NO. 1482 OF 2015**

Shantaram Fakira Balave & Ors. ...Appellants/Orig.Plaintiff Nos.2 to 4
vs.
Narayan Ramchandra Balave & Ors. ...Respondents/Defendants

AND

**SECOND APPEAL NO. 864 OF 2015
WITH
CIVIL APPLICATION NO. 1484 OF 2015**

Shantaram Fakira Balave ...Appellant/Orig.Defendant No.2
vs.
Narayan Ramchandra Balave & Ors. ...Respondents/Orig.Plaintiffs

Mr.P.B. Shah I/b. K.P. Shah for Appellants.
Mr.U.B. Nighot for Respondent Nos.1 and 3.

CORAM : S.C. GUPTE, J.

20 FEBRUARY 2017

P.C.:

Heard learned Counsel for the parties.

2 These two appeals challenge two separate judgments and orders passed in two suits, one filed by the Appellants for specific performance of an agreement for sale purportedly executed by the predecessor-in-title of the Respondents in favour of the predecessor of the Appellants, and the other a suit for possession filed by the Respondents herein against the Appellant, Shantaram Fakira Balave, and others for recovery of possession of the suit property. This latter suit was on the basis

of the title of the Respondents.

3 The predecessor-in-title of the Appellants, one Fakira Chima Balave (“Fakira”), had filed the original suit for specific performance of an agreement for sale dated 2 December 1974 executed by the predecessor-in-title of the Respondents herein, one Ramchandra Balave (“Ramchandra”), whereas the Respondents, who claimed through Ramchandra, were original Plaintiffs in the suit for possession filed against the Appellant Shantaram and others for recovery of possession based on their title. (For the sake of convenience of reference, the Respondents are referred to as “the Plaintiffs”.) The Plaintiffs alleged that Defendant No.2, Shantaram, was in possession of the suit property unauthorisedly, without having any right to such possession. A notice was issued to him on 12 January 1997 to hand over vacant possession of the suit property to the Plaintiffs. It was the Plaintiffs’ case that a tenancy case pending between Ramchandra and Fakira had led to the filing of an RTS appeal, which was decided on 14 May 1967. The order in that appeal records an admission of deceased Fakira that he was not the tenant of the suit property and accordingly, disposes of the appeal. Thereafter, deceased Fakira and others had filed a civil suit, being Regular Civil Suit No.92/1982, against Ramchandra in the court of Civil Judge, Junior Division, Sinnar on 29 March 1982. This suit was for a perpetual injunction restraining Ramchandra from interfering with the possession of Fakira and others. The suit was dismissed on 30 April 1984. The matter was carried in appeal before the District Court, Nashik by Fakira. The appeal was partly allowed on 21 September 1987 and Ramchandra was directed not to take possession of the suit property without following due process of law. It is the Plaintiffs’ case that after they came to know of the decision of the appeal sometime in the month of

March 1997, the Plaintiffs filed the present suit for possession based on their title. In the meantime, Fakira had filed the other suit for specific performance of the agreement for sale, referred to above. It was the case of Fakira in that suit that by the agreement for sale executed between the parties on 2 December 1974, Ramchandra had agreed to sell the suit property for a consideration of Rs.7500/- to Fakira; that Fakira had paid an earnest amount of Rs.3000/- to Ramchandra towards this consideration; that the remaining amount of Rs.4500/- was to be paid within 10 years, whereupon a sale deed was to be executed; and that it was also agreed that in the event of Fakira not paying the remaining amount of Rs.4500/-, the earnest money was liable to be forfeited. It was claimed that the possession under the original tenancy of Fakira was confirmed under the agreement for sale.

4 The trial court came to the conclusion that Fakira had failed to prove the execution of the agreement for sale or that he had paid a sum of Rs.3000/- by way of earnest money thereunder. The trial court also held that Fakira had failed to prove that he was ready and willing to perform his part of the alleged agreement for sale. The trial court, however, held that Fakira had executed another agreement with Ramchandra on 2 December 1974 agreeing to relinquish his entire right over the suit property after receipt of Rs.3000/- within a period of 10 years. The trial court held that Fakira was, accordingly, entitled to refund of the amount of Rs.3000/- with interest at the rate of 6% p.a. The trial court, in the premises, decreed Fakira's suit partly by ordering the successors of Ramchandra, i.e. the Plaintiffs herein, to pay Rs.3000/- with interest. As for the Plaintiffs' suit for possession, the trial court held that the Plaintiffs' suit based on their title, alleging unauthorised possession of the suit property by the Appellant

Shantaram, was not contested by Shantaram by filing any written statement. The trial court, in particular, held, on the basis of the Plaintiffs' evidence, that the Plaintiffs had a title to the suit property; that their title was supported not only by oral evidence but documentary evidence of the revenue records. The trial court also noted that the suit for injunction earlier filed by Fakira and others against the Plaintiffs herein / their predecessor was dismissed and in the appeal from that order, the Plaintiffs / their predecessor were simply ordered not to obstruct the possession of the Defendants except by due process of law, whereas in Fakira's suit for specific performance, the court had come to the conclusion that he was not entitled to any specific performance. Though the possession of Appellant Shantaram, thus, was an admitted fact, the court finally held that this possession was not in pursuance of any agreement for sale or in part performance and there was no pleading or evidence in rebuttal on behalf of Shantaram to defend the Plaintiffs' suit for possession and therefore, the Plaintiffs were entitled to relief of possession based on title. The court, accordingly, decreed the Plaintiffs' suit.

5 As far as Fakira's suit for specific performance is concerned, there are concurrent findings of fact by the courts below that Fakira and his successors had failed to prove the execution of the suit agreement for sale, or any payment of earnest money thereunder, or readiness or willingness to perform the suit agreement for sale. No substantial question of law can possibly arise in connection with these findings of fact, which are clearly based on evidence. The courts have not disregarded any relevant or germane material or considered any irrelevant or non-germane material for arriving at these conclusions. The second appeal filed by Shantaram and others (legal heirs of deceased Fakira) in the specific performance suit,

thus, has no merit.

6 As far as the Plaintiffs' suit for possession is concerned, it is submitted by learned Counsel for Appellant Shantaram that Fakira and his successor, Shantaram, have claimed to be tenants of the suit property. Learned Counsel relies on an agreement of 2 December 1974, which is admitted on record in the trial court, in support of his case of tenancy. It is submitted that considering the fact that the Appellant Shantaram is the tenant of the suit property, as acknowledged in this agreement, even if he is to be non-suited in the suit for specific performance as the legal heir of Fakira, there is no way the civil court could evict him from the suit property in the face of his tenancy. Learned Counsel relies on Sections 85 and 14 of the Maharashtra Tenancy and Agricultural Lands Act, 1948. Learned Counsel submits that the tenancy of any land can only be terminated in the event of the contingencies referred to Section 14, whilst the civil court is barred from exercising any jurisdiction for settling, deciding or dealing with any question of tenancy under Section 85. It is submitted that these questions under the Maharashtra Tenancy and Agricultural Lands Act are required to be settled, decided or dealt with by the authorities mentioned in Section 85. The submission has no force whatsoever. In the first place, it is pertinent to note that the Plaintiffs' suit for possession was not contested by Defendant Shantaram by filing any written statement. The suit proceeded against Shantaram in the absence of a written statement. In other words, insofar as the alleged tenancy of Shantaram is concerned, he did not take up any plea to that effect to defend his possession. There is, accordingly, no question to be decided in the Plaintiffs' suit for possession regarding the Defendant's plea of tenancy. Section 85 or Section 14 of the Maharashtra Tenancy and Agricultural

Lands Acts, therefore, could not come into play at all.

7 It is further submitted by learned Counsel that the agreement of 2 December 1974 was on record before the court in a companion suit, namely, Fakira's suit for specific performance, and in that suit, Fakira and his successor, namely, Appellant Shantaram, had taken a specific plea that there was originally a subsisting tenancy of the suit property insofar as Fakira and Appellant Shantaram are concerned. It is pertinent to note that whilst originally there was an issue framed in that suit in respect of the alleged tenancy, by a subsequent order passed in that suit, that issue was dropped. This was purportedly on the footing that the issue had no relevance from the standpoint of Fakira's suit for specific performance, since that suit proceeded on the basis of a purported agreement for sale dated 2 December 1974. This was evidently accepted by Appellant Shantaram and the matter rested at that. In the present second appeal, there is no ground raised by Appellant Shantaram insofar as non-consideration of the issue of his tenancy in the suit for specific performance is concerned. The emerging picture, therefore, is this : whereas there is no issue for determination of the alleged tenancy of Appellant Shantaram in his own suit for specific performance and therefore, no occasion to consider any tenancy, in the Plaintiffs' suit for possession, there is no plea of tenancy raised by Appellant Shantaram. In fact, as noticed above, that suit proceeded in the absence of a written statement on the part of Appellant Shantaram. Once again, in the absence of a plea as to his tenancy, there was no occasion for any of the courts below to consider the question of tenancy and the impugned judgment and order cannot be said to be suffering from any substantial error of law. In the premises, there is no merit even in the present second appeal filed by

Shantaram in the suit for possession filed against him.

8 Both second appeals are, accordingly, dismissed. No order as to costs.

9 At the request of learned Counsel for Appellants, the interim protection operating in favour of his client, Shantaram Fakira Balave, during the pendency of this appeal, is continued for a period of six weeks from today.

10 In view of the disposal of the second appeals, the civil applications do not survive and the same are also disposed of.

(S.C. GUPTE, J.)