

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

SECOND APPEAL NO. 798 OF 1997

Shri Pandurang Yashwant Gondhali & Ors. ..Appellants

v/s.

Shri Ramchandra Nana Khot & Ors. ..Respondents

Mr. Vijay Killedar for the Appellant
None for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 3RD DECEMBER, 2018.**

P.C.

1. The appellants have challenged the judgment and decree dated 11th September, 1997 whereby the learned District Judge, Sangli has dismissed the appeal No. 454 of 1987 and thus confirmed the judgment and decree dated 29th August, 1987 passed by the learned Civil Judge, Junior Division, Islampur in Regular Civil Suit No.79 of 1964.

2. The appellants herein are the legal representatives of the

original plaintiffs. The plaintiffs had filed a suit for redemption of mortgage and for possession of the agricultural land bearing Survey No. 301 Sub Division 3 and 4 of Village Mangale. The plaintiff had claimed that the suit land was mortgaged to the original defendant Yeshwant on 19th June, 1944. The possession of the said land was delivered to Nana Khot, the predecessor of the respondent on the same date. The plaintiff claimed that the original defendant Nana had been enjoying the usufruct in lieu of interest. He claimed that the mortgage amount had been satisfied. He therefore prayed for redemption of mortgage and for delivery of possession.

3. The defendant claimed that his father was a tenant of the suit land and after the death of his father, he continued to be in possession of the land as a tenant thereof. The plaintiff mortgaged the property while he was in possession of the land as tenant. The defendant claimed that the plaintiff cannot seek possession of the tenanted lands.

4. The trial Court as well as the first appellate court have observed

that the issue of tenancy was referred under the provisions of Section 85 of the Bombay Tenancy Act and that the same has been answered in favour of the defendants holding that the defendants are the tenants of the suit land. Both the courts below have observed that though the plaintiffs had alleged that the plaintiffs had alleged that they had challenged the said judgment in appeal, he had not produced the certified copy of the appeal memo and/or the decision passed in the said appeal. Both the courts have rendered a finding that since the defendants are held to be the tenants of the suit property, the plaintiffs are not entitled to recover possession of the suit property since the defendant is declared as tenant of the property.

5. Shri Killedar, the learned Counsel for the appellant submits that both the courts have not considered the fact that the Tenancy Appeal No.77 of 1967 was pending as on the date of judgment of the trial court. It is to be noted that even before this Court, the plaintiff has not produced any decision of the appellate court in Appeal No. 77 of 1967 to indicate that the Order of the Tahsildar was set aside or

modified. In the absence of such material, it cannot be said that the findings recorded by the learned trial Court were contrary to the record. The finding of fact recorded by both the courts are based on evidence on record and is neither perverse nor illegal. The appeal does not involve substantial question of law. Hence, the same is dismissed.

(ANUJA PRABHUDESSAI, J.)