

JPP

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

SECOND APPEAL NO. 643 OF 2016

Mr. Vijay Gopal Kulkarni and Ors. ... Appellants.
V/s.
Smt. Laxmibai Baburao Mulik and Ors. ... Respondents.

Mr. Anilkumar Patil for the Appellants.
None for the Respondents.

CORAM : N.M. Jamdar, J.

DATE : 17 January, 2018.

Oral Order :-

The Appellants have challenged the judgment and order passed by the learned District Judge, Islampur dated 21 November 2015 allowing the Appeal No. 95 of 2009 filed by the Respondent – Defendant and dismissing the suit filed by the Appellant – Plaintiff.

2. The suit was filed by the Appellant – Plaintiff for recovery of possession from the Respondent. The suit was decreed by the learned Civil Judge by the judgment and order dated 29 April 2009. In the Appeal, the learned District Judge has set aside this decree.

3. Heard the learned Counsel for the Appellants.

4. The learned Counsel for the Appellants contended that the order passed by the learned District Judge is not correct and without any cogent reason the judgment and order passed by the learned Civil Judge has been reversed. The suit property was originally owned by one Gopal Vishnu Kulkarni. It was mortgaged to Dattatray Narayan Kulkarni. Father of the Plaintiff filed the proceedings under the Bombay Tenancy and Agricultural Land Act, 1948 for a declaration that the predecessors of the Respondent was not a tenant. These proceedings went against the father of the Appellant – Plaintiff and it was concluded that the Respondents predecessors were the tenants of the property. Though the Appellants tried to redeem the mortgage in view of the finding rendered in the tenancy proceedings, that the predecessors of the Respondent – Defendant were the tenants as on the tillers date and were deemed tenants, they could not have been dispossessed. Once in the tenancy proceedings it was held that the predecessors of the Respondent – Defendant had become deemed tenants, they continue to occupy the property in their own right and their occupation will not be affected even if the mortgage is redeemed.

5. Considering this fact, the learned District Judge has rightly passed the impugned order. No substantial question of law arises. The Second Appeal is dismissed.

(N.M. Jamdar, J.)