

Sequeira

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

***SECOND APPEAL NO. 19 OF 2016
Along with
CIVIL APPLICATION NO. 22 OF 2016
(For injunction)***

Mr.Shankar Anna Jadhav

.. Appellant

Vs

Rajaram Ganapati Nalwade

Deceased through legal heirs

1a. Jagannath Rajaram Nalwade and others .. Respondents

Mr.Nagesh Chavan, for the Appellant.

Mr.Kuldeep Nikam, for Respondent Nos.1A, 1C, 1E and 1F.

Coram : N.M.Jamdar, J.

Date : 15 January 2018.

Oral Order :

By this Second Appeal, the Appellant-Plaintiff challenges the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Kadegaon and learned District Judge, Sangli dismissing the Suit filed for injunction by the Appellant-Plaintiff and dismissing the Appeal.

2. The suit was filed by the Appellant in respect of Survey No.42 old Survey No.496 of village Karandwadi District Sangli. According to the Appellant-Plaintiff, he purchased the property from one

Anandrao under registered Sale deed dated 27 August 1966 and he was in possession of the same. It was his contention that Respondents-Defendants, claiming to be tenants of the land, were interfering with his possession. The Civil Judge and the District Judge came to the conclusion that the Appellant-Plaintiff could not question the proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 which had concluded in favour of the Respondents-tenants, and that the sale deed of the Appellant could not be considered. Accordingly, the Civil Judge dismissed the Suit No.6 of 2008 by Judgment and Order dated 19 September 2009 and the District Judge, Sangli dismissed the Appeal No.307 of 2009 by order dated 17 July 2015.

3. Heard learned counsel for the parties.

4. Mr.Chavan the learned counsel for the Appellant, contended that there was a valid surrender in favour of the landlord, the vendor of the Appellant and therefore certificate issued under Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948, was not valid. The District Judge has rightly noted that this would amount to challenging the 32M certificate which had become final. It is not in dispute that the predecessor of the Defendants was a tenant in the suit land and on the tiller's day. The proceedings thereafter were held under the Tenancy Act. The District Judge, in view of the certificate under section 32M of the Act in favour of the Respondents-

Defendants, did not accept the contention that there was any surrender. The District Judge, rightly observed that if there was any surrender as contended then the certificate would not have been issued. Once the tenant, on the tiller's day, had acquired a statutory right and if it was to be relinquished, a stringent methodology is provided under the Tenancy Act. The District Judge also observed that Sale Deed relied upon by the Appellant on the basis of which suit was filed, was contrary to the provisions of Tenancy Act.

5. From the date the suit is instituted i.e. the year 2008 till date for last ten years, there is no injunction in favour of the Appellant. After the Appeal is dismissed there is no injunction in favour of Appellant-Plaintiff. Though in the order dated 19 July 2017, learned Single Judge (S.J.Kathawalla, J.) has observed that interim order granted by the trial Court to continue, it was prior to the issuance of notice to the Respondents and it does not appear to have been brought to the notice of the learned Single Judge that from 17 July 2015 till 19 July 2017, i.e. for two years there was no interim order in favour of the Appellant-Plaintiff and this order appeared to have been passed when the Appeal was taken up for urgent relief for production.

6. Considering, the concurrent findings regarding the claim of the Appellant which is contrary to the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, the Appellant-Plaintiff is

not entitled to any relief, as long as the proceedings under the Tenancy Act are in favour of the Respondents-Defendants. The learned counsel for the Appellant-Plaintiff submitted that liberty may be granted to the Appellant-Plaintiff to challenge the culmination of proceedings in favour of the Respondents. It is always open for the Appellant-Plaintiff to take steps as per law. It however, needs to be clarified that the Judgment and Order passed by both the Courts are primarily on the foundation that the proceedings under the Tenancy Act have culminated in favour of the Respondents.

7. No substantial question of law arises in the Second Appeal. The Appeal is dismissed.

(N.M.Jamdar, J.)