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

SECOND APPEAL NO.115 OF 2016
WITH
CIVIL APPLICATION NO.178 OF 2016
IN
SECOND APPEAL NO.115 OF 2016

Jaiprakash Anant Vartak and anr.	... Appellants
v/s	
Gangadhar D. Vartak and others	... Respondents

Mr Pratap Patil i/b Mr Govind B. Solanke for the Appellants.
Mr S.K. Chinchalikar for the Respondent Nos.3, 4, 7A to 7D.

CORAM : N.M. Jamdar, J.

DATE : 25 January, 2018.

ORAL ORDER :-

The Appellants have challenged concurrent judgments and orders passed by the learned Civil Judge, J.D., Uran and the learned District Judge, Raigad Alibag dismissing the Suit and Appeal filed by the Appellant.

2. It is the case of the Appellant that the suit property was a joint family property and even though a Certificate under section 32M of the Bombay Tenancy and Agricultural Lands Act 1948 was

issued in the name of Defendant No.1, the predecessor of the Appellant was also jointly a tenant and therefore, entitled to a share in the suit property. Both the Courts have negated this contention.

3. The learned counsel for the Appellant submitted that the Respondent No.1 was eldest in the family and therefore, when the proceedings under the Tenancy Act culminated into a Certificate under section 32M of the Tenancy Act, it was granted in favour of the Respondent No.1. It was submitted that since the father of the Respondent No.1 and predecessor of the Appellant was a tenant, under section 40 of the Act, the tenancy would devolve on the heirs. The learned counsel for the Respondents supported the impugned orders and contended that there is no evidence produced by the Appellant, and the Suit and Appeal have been rightly dismissed.

4. It is an admitted position that a Certificate under section 32M of the Act is issued in the name of Respondent No.1. The Certificate was issued on 10th March 1967 or thereafter and the Respondent has constructed a residential house therein. The grant of Certificate only in the name of Respondent No.1 has not been challenged by the Appellant since the year 1967. As regards the contention that the tenancy right came to the heirs under section 40 of the Act, at the time of cross-examination, the Appellant has admitted that neither he nor his father were tenant on the 'Tillers'

Day. He has stated that he does not remember whether his father was a tenant and he does not know the landlord of the suit premises. He has also admitted that he or his father jointly have not paid the taxes along with the Respondent No.1. Since the Appellant admitted that his father was not a tenant, there is no question of section 40 of the Act being applicable. Till the date of filing of the Suit i.e. till the year 2003, the Appellant did not make any grievance regarding the Certificate issued in the year 1967.

5. The Respondent has been residing in the suit property since the year 1967, separately. Considering the totality of the evidence, both the Courts have rightly dismissed the claim of the appellant that the property is a joint family property. No substantial question of law arises. Second Appeal is accordingly dismissed. No order as to costs.

(N.M. Jamdar, J.)