

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

**SECOND APPEAL NO.538 OF 2016
WITH
CIVIL APPLICATION NO.673 OF 2016**

Narayan Riuba Babar
Since deceased thru legal heirs
Prakash N. Babar and Ors. ... Appellants
Vs
Prabhakar Krishnaji Tarlekar & Ors. ... Respondents
...

Mr. Mahendra Balasaheb Deshmukh for the Appellants.
Mr. Akshay Kulkarni I/by Mr. A.M.Kulkarni for the Respondent
Nos.1 to 6.

CORAM : SANDEEP K. SHINDE J.
DATE : 25 JANUARY, 2019

P.C. :

Heard learned counsel for Parties.

2 *The appellants/plaintiffs had filed Regular Civil Suit No.60 of 2003 seeking decree of preventive injunction against the defendants. The suit was dismissed and the decree was confirmed in the Regular Civil Appeal No.84 of 2013 by the judgment and order dated 15th April, 2015. It is against this judgment and decree, this second appeal is preferred by the plaintiffs.*

3 *I have perused the plaint in Regular Civil Suit No.60 of 2003. The plaint refers to the tenancy proceedings initiated against the plaintiffs and the order passed in Tenancy Case No.66 of 2002 dated 28th February, 2003 whereby Tahsildar had directed plaintiffs to hand over possession of the suit land to the defendants. In paragraph 3 of the plaint, cause of action as pleaded refers to the tenancy proceedings and the orders passed therein. Even in the prayer clauses, reference is made to the order passed in tenancy case and thus, injunction was sought that the defendants be prevented from taking possession of the suit land in pursuance to the order passed in Tenancy Case No.66 of 2002 dated 28th February, 2003.*

4 *The learned trial Judge dismissed the suit on the ground that the suit was not maintainable in view of the provisions of Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 (in short 'BT & AL Act) which reads as under:*

“Section 85. - Bar of jurisdiction(1) No civil Court shall have jurisdiction to settle, decide or deal with

any question (including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal a Manager, the Collector or the (Maharashtra Revenue Tribunal) in appeal or revision or the (State) Government in exercise of their powers of control.”

. *Yet another ground on which suit was dismissed is bar in terms of Clause (h)(i) of Section 41 of the Specific Relief Act, 1963.*

5 *The judgment of the learned trial Court was carried in Regular Civil Appeal No.84 of 2013. The appellate Court dismissed the appeal on the ground that the suit itself was not maintainable in view of the provisions of Section 85 of the BT and AL Act and also on the ground that plaintiffs' case does not fall within the ambit of Section 38 of the Specific Relief Act, 1963.*

6 *Heard the learned counsel for the Parties. Perused the judgments of the Courts below.*

7 *Defendants herein had terminated the tenancy of the*

plaintiffs on the ground of default in payment of rent and for creating fragment of the suit land. Termination of tenancy was upheld by the Awwal Karkun in appropriate proceedings. The order of Awwal Karkun was challenged before the Sub-Divisional Officer and thereafter before the Maharashtra Land Revenue Tribunal. It was also carried before this Court and lastly before the Hon'ble the Supreme Court. Throughout the order of Awwal Karkun was maintained and confirmed. The Supreme Court dismissed the Special Leave Petition of the plaintiffs in December, 1999. It is thereafter the defendants were directed to hand over possession of the suit land by order dated 28th February, 2003. It is this order which was challenged by the plaintiffs in the suit aforesaid. It may be stated that in the plaint, it was not disclosed by the plaintiffs that the order passed by the Awwal Karkun was upheld by the Supreme Court. It is on this additional ground for non disclosing the material facts, the appeal of the plaintiffs was dismissed.

8 *The learned counsel for the appellants submitted that both the Court below committed an error by holding that the suit was not*

maintainable in view of the provisions of Section 85 of the BT & AL Act which according to them is substantial question of law.

9 *Upon perusing the plaint, I am of the considered view that plaintiffs essentially challenged the order passed by the Tahsildar in the Tenancy Case No.66 of 2002 whereby they were directed to hand over possession of the suit land. It is submitted that the jurisdiction of the civil Court is not ousted when the claim is made simplicitor for perpetual injunction and, therefore, the suit was maintainable. However, after perusing the pleadings, in my view, challenge was essentially to the order passed by Tahsildar as aforesaid. In fact, prayer also refers to the order of Tahsildar on the basis of which the plaintiffs were apprehending dispossession at the hands of the defendants. Thus, after going through the entire plaint, in my view, suit was barred in view of the provisions of Section 85 of the BT & AL Act. It cannot be overlooked that the appellants/plaintiffs sought relief of perpetual injunction which is a equitable relief, however, the plaintiffs did not disclose the material facts in the plaint that their challenge to the*

termination of the tenancy was upheld by the Supreme Court. Even on this ground, in my view, the observations made by the learned appellate Court cannot be faulted with.

10 *The appeal does not give rise to substantial question of law. The appeal is, therefore, dismissed. The Civil Application is disposed of.*

(SANDEEP K. SHINDE, J.)