

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 604 OF 2016***

Mahadeo Bala Gurav
(Deceased through his LRs)
Amol Baburao Gurav & Ors. Appellants

V/s.
Shivaji Tatoba Mahar (Hande)
(Deceased through LRs)
Dadasaheb Shivaji Hande (Mahar)
(Deceased through his LRs)
Kiraj Dadasaheb Hande & Ors. Respondents.

Adv. Pratap Patil for Appellants.
Adv. Bhushan Walimbe for Respondents.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 30th, 2019

ORDER :

1. Substantial question of law that falls for consideration is; whether the Appellate Court was justified in law in preventing the appellants/ original defendants from obstructing the plaintiffs' peaceful possession over the suit land, in as much as indisputedly, the defendants are the landlords and the respondents/ plaintiffs are the tenants in the suit agricultural land.

2. With consent of the counsel for the parties, appeal is taken for final hearing at the admission stage.

3. The respondents herein are the tenants in the suit Devasthan Inam Class III lands, who are claiming statutory protection under the provisions of Bombay Tenancy and Agricultural Lands Act on the ground that they were in possession of the suit land on tillers day i.e. 01.04.1957. Thus, the proceedings under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act (BTAL Act) were initiated for fixing the purchase price. However, the landlord obtained the certificate of exemption under Section 88(B) of the said Act. In the result, the proceedings under Section 32(G) were terminated. Soon thereafter, the landlord filed an application before the A.L.T. and sought declaration that the plaintiffs were not tenants in the suit land. The A.L.T. by order dated 19.02.2005 declared that the plaintiffs are not tenants and the order has been confirmed by the Sub Divisional Officer. The proceedings reached to Maharashtra Revenue Tribunal and the learned member held that the plaintiffs are the tenants in the suit land. Against the order of MRT, the defendant/ landlord preferred Writ Petition, which is pending before this Court.

4. In the interregnum, the defendants were obstructing the plaintiffs' possession on the basis of order passed by the A.L.T. and S.D.O. and since apprehending dispossession, the tenants filed the regular Civil Suit No. 64 of 2006 in February, 2006. The Learned Trial Judge dismissed the suit in February, 2010 against which,

regular Civil Appeal was preferred by the plaintiffs/ tenants.

5. In the regular Civil Appeal, Learned Appellate Court set aside the decree of the Trial Court and restrained the defendant (landlord), their servants, agents or representatives permanently from obstructing the plaintiffs' (tenants) peaceful possession over the suit land.

6. Aggrieved by the decree passed by the Appellate Court, the defendant/ landlord has preferred this appeal.

7. Learned Counsel for the appellant would submit that the appellants being the landlords and the respondents being the tenants, the impugned order could not have been passed, as it forecloses all the remedies, available to the landlord for the recovery of the possession in accordance with law. It is submitted that even if the landlord succeeds in the Writ Petition preferred against the order of the MRT, landlord may not be able to initiate recovery proceedings in accordance with law, in view of the impugned decree passed by the Appellate Court.

8. Thus, taking into consideration the facts of the case, the impugned decree would certainly foreclose all the remedies available to the landlord for recovery of suit land from the respondents in

accordance with law. In other words, the impugned decree amounts to injunction against the statutory remedies which is impermissible.

9. In view of the facts of the case and taking into consideration that the proceedings between the parties are pending before this Court, the impugned decree is modified to the extent, that the appellant landlord shall not obstruct tenants possession over the suit land; however he can take recourse to all such remedies in law for evicting tenant from the suit land in accordance with law.

9. With aforesaid observations, the impugned decree is modified and appeal is partly allowed and disposed of.

10. It is further clarified that this Court has not expressed any opinion on the merits of the matter, but kept the remedies open to the landlord, which are available to him in law seeking eviction of tenant from the suit land. The contentions of both sides are expressly kept open.

(SANDEEP K. SHINDE, J.)