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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 510 OF 2002**

1. Shri. Gotiram Hiru Pawar
(Since deceased) through LR's
1/1 Laxmibai Rajaram Kabhaire,
Age about 41 years
1/2 Kusum Pundlik Mhatre,
Age about 38 years
1/3 Nirabai Dattatraya Bhoir
Age about 39 years
1/4 Nijabai Bharat Mhatre
Age about 42 years
All residing at Khalapur

.....Appellants

2. Shri. Kashinath Gotiram Pawar
Age 31 Years, Occupation Nil
Residing at Vayal, Taluka Khalapur,
Dist. Raigad

V/s.

1. Chandrashekhar Sadashiv Deshpande
(Since deceased) through LR's respondent
nos. 2 & 3 herein.

2. Sau. Sanjivani Chandrashekhar Deshpande
Age 66 years

.....Respondents

3. Shri. Vishwas Chandrashekhar Deshpande
Age 34 years
All occupation Agriculture and Shikshan

Sanstha, all residing at Vidyalankar,
Senapati Bapat Road, Dadar,
Mumbai – 400 028

Mr. Ashutosh M. Kulkarni i/b Mr. Sarthak S. Diwan for the
Appellants
Mr. Ravi Girish Shinde i/b Mr. S. M. Gorwadkar for respondent nos.
2 &3

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 11, 2019.

JUDGMENT:

Heard the learned counsel for the appellant-original defendant.

2 Regular Civil Suit No. 27 of 1991 preferred against the present petitioner came to be decreed vide Judgment and Decree dated 31/08/1994 passed by Civil Judge Junior Division, Khalapur which was confirmed in First Appeal No. 212 of 1994. As such, this Second Appeal.

3 The suit in question was for declaration and injunction wherein respondent/plaintiff claim that they are owner and in possession of the suit property. This very suit property was subject

matter of proceedings taken out under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('the Act' for short) by the respondent-landlord in Tenancy Proceedings No. 6 of 1988. In the said Tenancy proceedings, it was declared that present appellant is not a tenant as he has surrendered his tenancy. Said order is confirmed up to this Court as petition questioning said finding is already dismissed.

4 In the aforesaid background, the learned counsel for the appellant tried to frame a question of law on the issue of whether the Court below was right in concluding that the respondent/plaintiff were in lawful possession of the suit property.

5 Once concurrent findings are recorded by both the Courts below against the petitioner, if the aforesaid question of law is appreciated, it is established through evidence on record that in the year 1988, original tenant namely Gotiram has surrendered the tenancy. He has in categorical terms given an admission that respondent/plaintiff are in possession of the property in question.

6 In view of above and having regard to the fact that the order passed under Section 71(b) of the Act, since is confirmed by this Court in Writ Petition against present appellant, the fact that appellant has given an admission of lawful possession of the respondent/plaintiff, in my opinion, no case for interference in Second Appellate jurisdiction is made out.

7 Appeal as such fails, dismissed.

[NITIN W. SAMBRE, J.]