

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

**SECOND APPEAL ST. NO. 23063 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Eknath Nagu Dhumal (deceased)

through Legal Heirs Shri Suresh

Eknath Dhumal & ors.

..Appellants.

v/s.

Ram Shamji Karadi(Patil) & ors.

..Respondents.

Mr. Ajay Joshi i/b. Mr. Rajesh A. More, advocate for appellants.

Mr. P.S. Dani, Sr. Counsel o/b. Mr. Prasad B. Kulkarni, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 16, 2019.

P. C. :

1 The appellants herein impugns the judgment and order dated 30/4/2019 passed by the District Judge, Raigad, Alibag in RCS No. 197 of 2012, thereby setting aside the Judgment and Decree passed by the learned CJSD, Panvel in special Civil Suit No. 152 of 1997. The substantial question of law as framed by the appellant are as follows :

(i) Whether the learned Judge of Appellate Court committed serious error by recording the finding that “only

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Ramji Patil was a tenant purchaser” in view of admitted position that there is no specific pleading & corroborative testimony by the defendant and further in view of the bar created u/sec. 85-A of Bombay Tenancy & Agricultural Land Act, 1947 ?

(ii) Whether the Judge of Appellate Court committed serious error by discarding documentary evidence below Exh. 57 & 58, on ground of non-examination of clerk, in view of fact witness on said document has been examined before trial court & defendant never raised any objection before trial court in respect of “mode of proof”?

(iii) Whether the Judge of Appellate Court committed serious error by upholding objection raised by appellant on point of mode of proof of Exh. 57 & 58, in view of settled principal of law that the objection on to mode of proof has to be taken before trial court and failing which it shall be deemed to be waived by party and further excluded from raising such objection at subsequent stage ?

2 In the substantial question of law framed at (i), it can be said that defendant had not pleaded that Ramji was tenant purchaser. It follows from the same that there was no objection that maintainability of the appeal would be questionable for want of jurisdiction and that the issue of tenancy ought to have

been referred to the tenancy court.

3 As far as the next issue of law is concerned, that the tenant had not raised a specific objection on the admissibility of the document or the mode of proving the said document and therefore, the appellate court has failed to consider the issues.

4 The second submission of the learned Counsel for the appellant is that the appellate Court has not framed points of determination and therefore the said Judgment is erroneous in the eyes of law.

5 Learned Counsel has further submitted that the appellate court has not considered the definition of interested person as contemplated in the Land Acquisition Act, 1894. It is submitted that the defendant had only pleaded that the documents are fraudulent documents.

6 As against this, learned Counsel for the respondent has drawn attention of this Court to the pleadings in the plaint at paragraph-9, which is appended to the description of the property. The plaintiff had pleaded that 4 acres and 20 gunthas of land were in possession of the plaintiff in the capacity of an owner and that he was cultivating the said land and it was

subsequently acquired by CIDCO and only because the record of rights showed name of the father of the defendant as owner, the compensation was awarded in favour of the owner as per the record of rights. It is in these circumstances, according to the learned Counsel for the defendant that there was no question of referring the matter to the tenancy court.

7 As far as the agreements at Exh. 57 and 58 are concerned, firstly they are unregistered documents, secondly, the contents of the said documents are not proved by the witnesses.

8 Learned Counsel for the appellant submits that although there are pleadings to the effect that the plaintiff was a tenant purchaser/owner of the said property, there is no prayer to the effect that he is seeking title or declaration as an owner of the said property. The learned Counsel for the appellant orally submits that the said pleadings were in consonance with the contents of the documents which are at Exh. 57 and 58 on the basis of which the appellant was seeking compensation towards enhanced award.

9 The agreement is to be admitted or denied in totality. The contents of the agreement cannot be severed into 2 parts, which are inconsistent with each other and therefore, it can be

seen that the prayers in the plaint were in consonance with the pleadings in the plaint and the trial court had fallen in error in granting decree in favour of the plaintiff without considering that the plaintiff had already claimed that he was the owner of the land of which he was seeking compensation. In view of this, all the substantial question of law framed by the appellant would be answered in the negative.

10 The learned Counsel has placed reliance upon the Judgment of the Apex Court in the case of **Dayamathi Bai v/s. K.M. Shaffi reported in (2004) 7 SCC 107**, where the Apex Court has considered the stage of objection raised in respect of admissibility of evidence and mode of proof. In any case, since this Court has arrived at a conclusion that neither the contents of the documents are proved coupled with the fact that the contents are inherently inconsistent with each other, the said citation would not be relevant in the present case. Hence, the appeal stands dismissed.

11 In view of dismissal of the second appeal, nothing survives in the application. The same stands disposed of.

[SMT. SADHANA S. JADHAV, J.]

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