

Rane

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SA-352-2015 &
SA-626-2016(sr.904)
Tuesday, 5.2.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 352 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 818 OF 2015
IN
SECOND APPEAL NO. 352 OF 2015**

**ALONGWITH
SECOND APPEAL NO. 626 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 1270 OF 2016
IN
SECOND APPEAL NO. 626 OF 2016**

Deepak Daji Patil and anr.
V/s.
Manubai Balu Thakare

.....Appellants

....Respondent

* * * *

Mr. Sanjay S. Patil, Advocate for the appellants-applicants.

None for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 5th February, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. Appellant was defendant in Suit No. 483 of 2000,

filed by the respondent, plaintiff for declaration of title and injunction, in respect of agricultural land bearing Survey No.79/1 (“suit land” for short).

3. It is the plaintiff's case, that his father (Jau) was protected tenant in the suit land in his individual capacity and tenancy proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act (“BT & AL Act” for short) culminated into Certificate of Purchase under Section 32M of the BT & AL Act issued in the name of his father. Reasonable apprehension of dispossession from the suit land prompted him to bring the suit against the appellant-defendant for declaration of title and injunction.

4. Both the Courts below decreed the suit and hence Appeal No. 352 of 2015 is preferred by the defendant.

5. It may be stated, another Second Appeal No. 626 of 2016 is preferred by the plaintiffs who had filed Regular Civil Suit No. 151 of 2001 (“second suit” for short) for partition of land Survey No.79/1 (suit land) against the plaintiff in Regular Civil Suit No. 483 of 2000.

6. Second Suit was dismissed throughout, hence the Second Appeal No. 626 of 2016.

7. It is the case of the appellants in both the Appeals that, Mukund, the common ancestor was protected tenant in the suit land and after his death, tenancy was devolved on Jau (father of respondent) as a Karta, being elder member of the family.

8. The Courts, in view of the evidence, rejected appellant's case and held father of the respondent was protected tenant in individual capacity and not as a Karta of the family.

9. Appellants, primarily relied on Mutation entry no.1045 and would contend that, upon demise of respondent's father, name of his father (Daji) came to be mutated and therefore it is to be held that suit land was held by the father of respondent as a Karta of family and thus his share therein can't be denied.

10. It appears, the appellant had also claimed and asserted that part of the purchase price was paid by his

father, however, for want of evidence, both the Courts rejected this contention.

11. I have perused the judgments in both the suits. In fact with the consent of the parties, evidence in first Suit No. 483 of 2000 was considered in the second suit. Besides, the revenue entries, oral evidence led by the parties has been considered and appreciated in right perspective. I do not see any perversity in the findings of fact recorded by the trial Court, as well as, first appellate Court. Even otherwise, Certificate under Section 32M issued in the name of respondent's father has not been challenged by the appellant nor by his predecessor.

12. That for the reasons stated hereinabove, both the Appeals do not give rise to substantial question of law and hence dismissed. All the Civil Applications in both the Appeals are also dismissed.

13. Appeals are disposed of.

(SANDEEP K. SHINDE, J)