

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

***SECOND APPEAL NO.667 OF 2018
WITH
CIVIL APPLICATION NO.1481 OF 2018
WITH
CIVIL APPLICATION NO.420 OF 2019***

Sambhaji Krishna Bhujbal and Ors. ... Appellants

Vs

Subhash Shankar Barge and Others ... Respondents

...

Mr. Dilip Bodake for the Appellants.

Mr. Sugandh B. Deshmukh for the Respondents.

***CORAM : SANDEEP K. SHINDE J.
DATE : 15 MARCH, 2019***

P.C. :

Heard the learned counsel for the Parties.

2 This Appeal is preferred by the plaintiffs whose suit for injunction was dismissed and the Regular Civil Appeal met with the same fate. It is against the decree, drawn in Regular Civil Appeal No.296 of 2015 by the learned District Judge-2, Satara, the plaintiffs have preferred this Second Appeal.

3 In the suit for injunction on the basis of possession, issue of title will not be direct or substantial in issue and thus, prayer of injunction will have to be decided with reference to findings on possession.

4 The learned trial Judge framed the issue of possession and called upon the plaintiffs to establish their possession in the suit land as on the date of the suit, which was instituted on 13th November, 1989. It is held by the trial Court that the plaintiffs could not establish their possession in the suit land. However, the learned Appellate Court while answering the point no.1, held that the plaintiffs could not establish their right, title and possession over the suit land. The Appellate Court, therefore, has gone into the issue of title which was unwarranted, in-as-much as in the plaint a relief of injunction was sought on possession.

5 The learned counsel for the appellants would submit, that finding of fact recorded by the Courts below is perverse being not consistent with the evidence on record. The appellants have, therefore, filed a paper-book containing the notes of evidence and orders passed between the parties by the Revenue Authorities concerning the suit land.

6 Before adverting to the oral evidence on the point of possession, it may be stated that the suit property was subject to the provisions of Maharashtra Tenancy and Agricultural Lands Act ('M.T.A.L. Act' for short) of which, predecessor in title of, the defendant nos.2 and 3, was landlord and one Shripati was tenant. Defendant no.2 is paternal uncle of defendant no.3-Vilas. Possession of suit land was restored to Vilas under Section 33-B of M.T. & A.L. Act, in 1973.

7 It is the plaintiff's case that, Vilas executed a sale deed on 18th January, 1989 in his favour for consideration of Rs.17,000/- and handed over possession of the suit land and since then was enjoying peaceful possession till the defendant no.1 attempted to obstruct it and thus filed the suit in November, 1989.

8 The defendant no.1-Subhash denied the possession of plaintiff and would assert his possession as a Tenant since 1977-78. He would contend that on 6th January, 1989 he had filed Tenancy Case No.1 of 1989 under Section 70(b) of the M. T & A.L. Act. Section 70 (b) reads as under:

“Section 70 Duties of the Mamlatdar

For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar:-

(a) to decide whether a person is an agriculturist;

(b) to decide whether a [person is, or was at any time in the past, a tenant] or a protected tenant [or a permanent tenant];”

Vide order dated 6th March, 1991, authority under the BT & AL Act held and affirmed possession of Subhash, in the suit land, as a Tenant. It may be stated issue of 'Possession' was framed by

Tenancy Court and answered it in favour of Subhash.

9 Vilas- Defendant No.3 challenged the order dated 6th March, 1991 before Sub-Divisional Officer in revision, but he dismissed the same. In appeal before the Tribunal, case was remanded on technical issue, however, High Court in Writ stayed the order of Tribunal on 24th April, 1997.

10 Thus, in the result, order dated 6th March, 1991 passed by the Tenancy Authority at the first instance is holding the field whereby finding in relation to possession of Subhash (Defendant No.1) in the suit land has not been interfered with by this Court, while admitting the subject Writ Petition.

11 Indisputedly Vilas-Defendant No.3 is not living in village but at Mumbai and Belgaum and plaintiff has admitted this fact is his evidence. Evidence of Plaintiff shows that he is adjoining land holder, however, he did not examine other adjoining landholders to

establish his possession in the suit land. Thus, except his bare words, plaintiff did not lead such other evidence, oral or otherwise to establish his possession in the suit land and thus failed to discharge the burden. On the other hand, two Revenue Authorities in exercise of statutory powers under the MT & AL Act has held and confirmed possession of Subhash in the suit land, after hearing plaintiff and defendant no.3-Vilas, (who sold the suit land to plaintiff). These orders of tenancy Courts are in force.

12 It may also be stated in Revenue records name of Subhash (Defendant No.1), is mutated since 2006-07 to 2016-17.

13 Thus, Courts below have carefully scanned the evidence and concluded that plaintiff could not establish his possession in the suit land on the date of institution of suit. Learned counsel for the appellants would contend the electricity bills and sugar-cane supply bills were produced to establish his possession, this piece of evidence has not been appreciated by the Courts below, however, evidence

shows neither electricity bills nor sugar-cane bills show sugar-cane crop was grown in the suit land.

14 Thus, taking into consideration entire evidence on record, in my view, finding recorded by the Courts below cannot be said to be perverse. Such findings of facts are consistent with the evidence on record. The appeal, therefore, does not give rise to any substantial question of law. Appeal is, therefore, dismissed. All the Civil Applications are disposed of.

15 That pending the suit vide order dated 19th June, 1990, defendant nos.1 and 2 were restrained from interfering with lawful possession of the plaintiff over the suit land and the same relief was continued by this Court on 26th November, 2018. In view of this, parties are directed to maintain status-quo for a period of eight weeks.

(SANDEEP K. SHINDE, J.)