

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.22 OF 2016**

Nagar Panchayat Kudal and Anr. Appellants.
V/s
Shri Mahadev Tukaram Arekar Respondent.

Mr. A.S. Khandeparkar i/b Khandeparkar & Associates for the Appellants.
Mr. Bhushan Walimbe for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 21, 2020

P.C.:-

- 1] Leave to amendment. Amendment be carried out forthwith.
- 2] Respondent/Plaintiff preferred Regular Civil Suit No.5 of 2008 for declaration and injunction which came to be decreed on 3/5/2013 by the Court of Civil Judge, Junior Division, Kudal. Decree was confirmed in Regular Civil Appeal No.68 of 2014 passed by learned District Judge on 23/1/2015. As such, this second appeal by the Municipal Council.
- 3] The suit was initially initiated against Grampanchayat, Kudal, which I am informed in 2009 was given status of Nagarpanchayat and

as such amendment has been granted.

4] The learned Counsel for the Appellants submits that once proceedings under the provisions of Maharashtra Tenancy and Agricultural Lands Act (hereinafter referred to for the sake of brevity as “the Act”) are pending between the parties, particularly as regards determination of right of Respondent/Plaintiff as tenant, Civil Court should have stayed its hands away. According to him, even if authorities under the said Act have declared Respondent as tenant, decision of the appellate authorities pronounced under Section 74 of the said Act is subject to revision under the provisions of Section 76 of the Act before MRT. He would further urge that Appellants are already in the process of filing revision against the order of authorities below, declaring Respondent as tenant and as such, judgments passed by both the courts below on the issue of injunction is liable to be quashed and set aside.

5] The question of law which needs consideration is, “whether courts below have committed an error in proceeding ahead with the civil proceedings when issue about status of Respondent as tenant

under the aforesaid Act was *sub judice* before the competent authority?

6] Considered the aforesaid submissions.

7] If the Act provides for remedy to the Appellants of preferring revision under Section 76, such remedy, of course, can be taken recourse to. However, whether orders passed by both the authorities under the said Statute can be ignored in the given set of facts of the case is an issue. The case of the Appellants is based Gift Deed. Fact remains that claim in the suit was not supported by the original owner.

8] This Court in the aforesaid background cannot be oblivious to the fact that revenue authorities under the Tenancy Act have already protected Respondent as tenant.

9] Apart from above, fact remains that status of Respondent as a tenant has been duly accepted by witness of the Appellants.

10] In the aforesaid backdrop, question of law which is sought to be

agitated against the concurrent finding does not hold any merit or substance. As far as submission of Shri Khandeparkar, learned Counsel for the Appellants, that Appellants are initiating proceedings of revision under Section 76 of the Act is concerned, if Appellants succeed in the said proceedings, Appellants will have every opportunity and right to execute the same against the Respondent. Keeping the aforesaid liberty open to the Appellants, in my opinion, there is no substantial question of law involved in the present appeal. As such, appeal stands dismissed.

(NITIN W. SAMBRE, J.)