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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.297 OF 2018
ALONGWITH
CIVIL APPLICATION NO.651 OF 2018
IN
SECOND APPEAL NO.297 OF 2018**

Shri Madhukar Moreshwar Gharat Appellant.

V/s

Shri Harishchandra Moreshwar Gharat & Ors Respondents.

Mr. Clifford Martis for the Appellant.

Mr. Rohit D. Joshi for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 21, 2020

P.C.:-

1] Heard.

2] This appeal is against the concurrent findings.

3] The learned Counsel for the Appellant while inviting attention of this Court to the findings recorded by the Courts below in the absence of Probate, based on Will executed in favour of Appellant, urged that Courts below have committed an error in recording finding in civil proceedings contrary to provisions of Section 85 of the Maharashtra Tenancy & Agricultural Lands Act, 1948. Relationship between the parties to the suit as brothers is not in dispute. Section 4 of the said

Act reads as under:-

“(1) A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not,-

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not crop share or hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation.- 1[I] A person shall not be deemed to be tenant under this section if such person has been on an application made by the owner of the land as provided under section 2A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

Explanation.- II Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be a tenant within the meaning of this section.]

2[(2) Notwithstanding anything contained in sub-section (1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate), for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating

the land personally, and [the *Sarpanch*, *Police Patil*, the Chairman of *Vividh Karyakari Sahakari Society*, and the cultivator of the adjoining land state on affidavit that, the said land is in the possession of, and is being cultivated by, such person uninterruptedly for not less than 12 years].

Explanation I.-For the purpose of this sub-section, the expression "land" includes the "warkas land."

Explanation II.- For the purpose of this sub-section, the expression "circumstantial evidence" includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sale of agricultural produce or any document regarding permission of felling of trees or excavation of minor mineral or any such permission granted with respect to such land.

(3) Notwithstanding anything contained in sub-clause (a) of clause (ii) of sub-section (1) of section 32H, the purchase price in such cases shall be 200 times the assessment.]”

4] In view of the express bar and status of tenancy *inter se* between the parties, in the backdrop of aforesaid provisions, contention that suit itself was not not sustainable as has been barred under Section 85 of the Act, is not sustainable. Appeal is devoid of merits and same stands dismissed. As a consequence, pending applications, if any, stand dismissed.

(NITIN W. SAMBRE, J.)