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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 716 OF 2018

Amit @ Suhas Ramchandra Jadhav & Ors. Petitioners.

V/s

Ashok Vishnu Jadhav & Ors Respondents.

Mr. Umesh Mankapure for the Petitioners.

Mr. Sanjeev Sawant i/b Mr. Abhishek Deshmukh for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] This Petition is by the Defendants to the Regular Civil Suit No.65 of 2015, who claimed to have purchased the suit property vide Sale Deed dated 10/07/2013 from predecessor-in-title Smt. Bhagirathi Ramchandra Jadhav. Respondents/Plaintiffs initiated aforesaid suit for injunction, thereby restraining the Defendants from interfering with the possession of the Respondents/Plaintiffs which they secured by virtue of their status as tenants under the provisions of the

Maharashtra Tenancy and Agricultural Lands Act (hereinafter referred to for the sake of brevity as “the Act”). In the said suit, application for injunction came to be allowed vide impugned order dated 23/09/2015 whereby Petitioners are restrained from interfering with the possession of Respondents/Plaintiffs which order was confirmed in Misc. Civil Appeal No.136 of 2015 vide order dated 21/07/2017 passed by the learned District Judge, Sangli. As such, this Petition.

2] It is the case of the Respondents/Plaintiffs that Petitioner No.4 was married to Ramchandra who expired in 1953 and she being widow, proceedings under Section 32G of the Act could not be proceeded against her. Mallu Krishna Jadhav was a tenant of deceased Ramchandra in relation to the property being land Gat No.976, old Survey No.222/5. Mutation Entry No.2343 of 1951-52 accordingly was carried out in the name of Mallu. Vishnu and Shankar are sons of deceased Mallu who inherited said tenancy right and continued in possession. Respondents are legal heirs of Vishnu and Shankar. According to them, on tiller's date i.e. 01/04/1957, they were in possession of the suit property and that being so, they are deemed purchasers. It is further claimed that even today also, they

continued in possession of the suit property by virtue of their status as tenants. Petitioners/Defendants under the guise of Sale Deed Dated 10/07/2013 have tried to disturb their possession and therefore they were entitled for injunction.

3] Petitioners/Defendants resisted the suit claim and submitted that Mutation Entry is carried out in favour of Respondents/Plaintiffs only for name sake in other rights column and that being so, it cannot be inferred that they are in possession of the suit property. According to Petitioners, Bhagirathi succeeded to possession through her husband deceased Ramchandra. As such, it is Defendants who are in settled possession by virtue of Sale Deed dated 10-07-2013 and that being so, it is claimed that injunction is liable to be set aside. It is also claimed by the learned Counsel for the Petitioners that in view of bar under Section 85-A of the Act, Civil Court has no jurisdiction to record the finding of tenancy. In the light of above, both the Courts below have committed an error in recording findings of tenancy of the Respondents over the suit property. He would urge that the issue as to whether Respondents are tenants and protected under the Act should have been referred to revenue authorities. In the aforesaid

background, learned Counsel for the Petitioners has prayed for quashing of the orders impugned.

4] With the assistance of the learned Counsel appearing for rival parties, I have perused the available record. Vide Mutation Entry No.2343 of 1955, name of Mallu Krishna Jadhav i.e. ancestor of the Respondents/Plaintiffs came to be recorded.

5] The 32G proceedings under the Act came to be deferred in view of status of the present Petitioner No.4 as widow. The old revenue record of 1951-52 and 1956-57 speaks of the Entry in the revenue record in the name of deceased Mallu Krsihna Jadhav as a tenant. The rent appears to have been paid, as could be inferred from the revenue record by the said Mallu to deceased Ramchandra. After the death of Ramchandra, vide revenue entry No.3945 names of Vishnu and Shankar were mutated on 26/02/1981. The aforesaid record demonstrates that Respondents/Plaintiffs are in settled possession of the suit property by virtue of their status under the Act. Fact remains that the Petitioners though have tried to establish their source of possession through Sale Deed, in the backdrop of aforesaid revenue

entries and status of Respondents as that of tenants, same cannot be accepted.

6] It appears that Respondents/Plaintiffs have issued a public notice on 10/05/2013 thereby putting the public to notice that they shall not deal with the suit property in view of tenancy proceedings. It appears that the Petitioners have purchased the suit property in spite of the fact that pendency of tenancy proceedings was within their knowledge.

7] Apart from above Tenancy Case No.101 of 1998 preferred by Petitioner No.4 was already dismissed. This court takes judicial note of the fact that there are various tenancy proceedings pending between the parties prior to execution of Sale Deed dated 10/07/2013.

8] Though, the learned Counsel for the Petitioners was justified in inviting attention of this Court to the provisions of Section 85-A of the Act, so as to claim that Civil Court cannot go into the issue of tenancy under the Act, Civil Court, however, cannot be said to be lacking

jurisdiction in the matter of grant of injunction based on the status of the Respondents/Plaintiffs as that of tenants under the provisions of the Act. A support can be drawn from Division Bench Judgment of this Court in the matter of *Marybai Marshal Pimenta and another vs. Ramnath Gopal Bhuskute and another* reported in **1987 0 Mh.L.J. 628**. In the aforesaid judgment, Division Bench of this Court also held that Civil Court has jurisdiction to grant injunction to protect possession of the party if it comes to conclusion that party is in possession of the land. However, it has to be clarified here that finding of Civil Court at the time of granting injunction on the status of the party as a tenant under the Act is not absolute as same is always subject to outcome of the proceedings under the Act.

9] Though Mr. Mankapure, learned Counsel for the Petitioners strenuously urged that court below should have recorded finding of possession, upon perusal of the order of learned lower appellate court it could be easily inferred that Respondents/Plaintiffs appear to be in settled possession of the property. In the aforesaid backdrop, in view of concurrent findings recorded by both the courts below and having regard to prima facie case being in favour of the

Respondents/Plaintiffs about their settled possession over the suit property, no case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)