

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.247 OF 2006

V.M. Shirke (Manager of Shree .. Appellants
Ramakrishna Shikshan Mandal) and ors

Versus

Harikrishna Bhairavnath Tiwari (since .. Respondents
decd) thru LRs and ors

WITH
INTERIM APPLICATION NO. 1622 OF 2021

Balkrishna Kulkarni Trustee of Shree .. Applicants
Ramakrishna Shikshan Mandal (since
dece)

Versus

Harikrishna Bhairavnath Tiwari (since .. Respondents
decd) thru LRs and ors

WITH
CIVIL APPLICATION NO. 407 OF 2009

V.M. Shirke (Manager of Shree .. Appellants
Ramakrishna Shikshan Mandal) and ors

Versus

Harikrishna Bhairavnath Tiwari (since .. Respondents
decd) thru LRs and ors

WITH

INTERIM APPLICATION NO. 3226 OF 2021

Annapoornadevi w/o Harikrishna B. .. Appellants
Tiwari and ors

Versus

Balkrishna Kulkarni (since decd)Trustee .. Respondents
of Shree Ramakrishna Shikshan Mandal
and ors

WITH
INTERIM APPLICATION ST NO. 24243 OF 2021

Annapoornadevi w/o Harikrishna B. .. Appellants
Tiwari and ors

Versus

V.M. Shirke (Manager of Shree .. Respondents
Ramakrishna Shikshan Mandal) and ors

WITH
CONTEMPT PETITION NO. 104 of 2021

Harikrishna Bhairavnath Tiwari (since .. Petitioners
decd) thru LRs and ors

Versus

V.M. Shirke (Manager of Shree .. Respondents
Ramakrishna Shikshan Mandal) and ors

...

Mr. Girish Godbole with Saket Mone, Subir Chakrabarti,
Ms.Anisha Aggarwal, Mr.Devansh Shah i/b Vidhi Partners for the
original appellant.

Ms.Poonam Madhwani with Megha H. Chobadia i/b V.T. Lulia
for respondent nos.1A to 1C and for the petitioner in C.P
No.104/2021.

CORAM: BHARATI DANGRE, J.
RESERVED : 1st MARCH, 2022
PRONOUNCED: 13th APRIL 2022

JUDGMENT :-

1 The present First Appeal is filed, calling in question, the judgment delivered by the City Civil Court, Mumbai in S.C. Suit No.5551/1990 instituted by the respondent herein, since the Suit is decreed and the defendants are restrained by an order of injunction from dispossessing the plaintiff, in any manner, from the portion of land Survey i.e. the suit property, without following due process of law.

2 The Appeal being admitted on 4/5/2006, is ready for hearing, since the R & P is received and even a private paper book is filed by the appellant.

3 I have heard learned counsel Mr.G.S. Godbole for the appellant and Ms.Poonam Madhwani for the respondent Nos. 1A to 1C.

4 Before I appreciate the grounds raised in the Appeal, I would briefly refer to the factual scenario giving rise to the institution of the Appeal.

The original plaintiff Harikrishna Tiwari (who is now represented through his Legal heirs) claim to be resident of Kandivali, Mumbai and claim to have been occupying 'Tiwari Shed' situated in Survey No.164, Hissa No.1/1A (Part) in village

Kandivli of Borivali Taluka in Mumbai Suburban District. He pleaded to be an agriculturist, carrying out agricultural operations in his land, and supported his claim to the effect by producing the relevant entries in the Property Register Card and indicated the property on the map of the suit land.

The original defendant nos.1 to 4, who are now deleted, are the Trustees of the Public Trust named 'Shree Ramkrishna Shikshan Mandal' registered under the Bombay Public Trust Act, 1950 and Shri V.M. Shirke, defendant no.4, is alleged to be the Manager of the Trust. The other defendants, being defendant nos.5, 6 and 7 are the developers of the property, who arrived at the scene at a later point of time and, therefore, I shall give their description a little later.

5 The plaintiff pleaded that prior to the year 1948, the land survey no.164 admeasured 36 Acres and 4.5 gunthas, and it was a forest land. Under the order of the Revenue Department of Former Bombay Government, area admeasuring 18 Acre and 12 Gunthas, was given and released in favour of the Trust by the Government, by order dated 6/12/1948. Pursuant to this order, the ownership rights of the suit land came to be conferred upon a Public Trust "Shree Ramkrishna Shikshan Mandal" and accordingly, the village revenue authorities effected mutation entry 694, depicting the name of the Trust as *Kabjedar*. The entry was duly certified on 12/3/1953.

The Trust came to be registered on 23/5/1953 for the purpose of promoting education and to begin with, it constructed a small structure in the suit land adjoining the road and a School was started in the said building. The School is marked in the map exhibited as Exhibit-B to the plaint.

6 The plaintiff averred that the suit land was almost 19 acres and since the whole of it was not required for educational activities of the Trust, the Trust deemed it fit to exploit it for the purpose of agricultural operations, and engage the same in growing crops like rice, vegetables, wheat, fruits, etc. For the said purpose, substantial expenditure was to be incurred for sinking well, fixing water pumps, constructing of cattle shed, purchase of animals and their maintenance etc. The specific case of the plaintiff is that the Trust was not willing to spend any amount towards it, and therefore, it let out the suit land to the original plaintiff for carrying out agricultural operations, and in turn, created tenancy prior to 1957, in respect of the entire suit land, except the small portion on which the school was being run by the Trust.

 Claiming that the plaintiff continued to remain in exclusive possession of the suit land as an agricultural tenant and continue to carry the agricultural operations till his death on 30/1/1995, the plaintiff specifically asserted that all the expenses of cultivation are borne by the plaintiff himself and the Trust

never contributed towards the cost of cultivation. As an arrangement for the plaintiff to carry out the operations, the rent of Rs.8,000/- per year was paid to the Trust upto the year 1986, however, because of the applicability of the provisions of Bombay Tenancy and Agricultural Lands Act, 1948, no rent receipts were passed on. The plaintiff also plead that at times, the arrears of the rent was deposited by the plaintiff in the Bank and the Trust had withdrawn the same.

The case of the plaintiff is, he planted various trees on the suit land, and constructed a structure admeasuring 15 x 15, which was used for residence, alongwith the cattle shed. One pump room was also installed. It is further case of the plaintiff, that for developing the said property, the plaintiff obtained loan from the Bank by providing security of the suit land, and in order to enable them to do so, the Trust itself accorded it's no objection to the Bank.

7 The specific case pleaded by the plaintiff is, to the effect that the suit land was given to the plaintiff on tenancy prior to 1957, and in order to avoid application of provisions of Tenancy Act, a "Camouflage Agreement" was entered into with him, where he was described as "Farm Manager" of the Trust for the purpose of supervising the agricultural operation of the Trust on the suit land. This agreement dated 1/4/1976 forms the bone of contention between the parties, as the plaintiff claim it to be a camouflage, whereas the Trust would submit that the agreement

intended to cover, what the Trust wanted to undertake by appointing the plaintiff as a 'Farm Manager'.

8 As per the plaintiff's case, he was in peaceful and exclusive possession of the suit land, but somewhere in 1995, he learnt that the Trust had entered into an agreement/ arrangement with defendant no.5 for development of the suit land for residential and commercial purpose, and accordingly, the defendant nos.4, 5 and 6 started some construction of a boundary wall without intimating the plaintiff though he was in exclusive possession of the suit property. Contending that the land is not yet converted into non-agricultural use, the construction was held to be violative of the land user.

The plaintiff attempted to restrain the defendants from carrying out any construction, but since the defendants attempted to restrict the entry of the plaintiff and warned him not to interfere with their operations on the suit land or object to their entry, the matter reached upto the police authority, and the allegation of the plaintiff is, the defendant by using his influence made a serious attempt to dispossess the plaintiff.

Apprehending his dispossession in an unlawful manner, he filed a Suit on the basis of the cause of action, which accrued to him on 27/6/1990, when the defendants attempted to interfere with the plaintiffs possession and agricultural operations by giving threats and bringing the material for the construction activity on the suit property. The plaint, pleading as above,

sought the following reliefs :-

(a) For decree and Judgment in favour of the Plaintiffs and against the Defendants for permanent injunction, restraining Defendants, either by themselves or through servants, agents or contractors, from entering upon the suit land and/or interfering in any manner whatsoever with the Plaintiffs' peaceful possession and enjoying of the suit land viz. S.No. 164, Hissa No.1/1A (part) bearing CTS No.110 of Village Kandivli, Taluka Borivali in Bombay Suburban District, save and except portion marked in Red Colour on the map, being Exhibit "B" annexed hereto otherwise than in due course of law.

(b) That pending the hearing and final disposal of the suit, order of ad-interim injunction be issued restraining the defendants either by themselves and/or through their servants, agents and contractors, from entering upon the suit land or interfering with Plaintiffs' peaceful possession and enjoyment of the suit land viz. S.No. 164, Hissa No.1/1A (part, being CTS No.1100 situated at Village Kandivli, Taluka, Borivali, in Bombay Suburban District save and except portion marked in Red colour on the Map, being Exhibit "B" hereto, otherwise than in due course of law.

9 Upon the Suit being instituted, the defendant nos.4 to 4(d) filed their written statement by raising a preliminary objection that the property is owned by the Trust, and in absence of a necessary sanction from the Charity Commissioner under the provisions of BPT Act, 1950, the Suit cannot be entertained. The point of limitation was also raised by pleading that it is the case of

the plaintiff, that the defendants committed an alleged act of trespass and constructed compound wall on 9/7/1987 while the Suit is filed on 30/7/1990, after lapse of 3 years. Another objection, raised by the defendants, is the plaintiff claimed to be the tenant in respect of the suit property, but there is no declaration of the alleged tenancy in their possession by Court of competent jurisdiction and therefore, the Suit must be dismissed.

10 On merits, the defendants pleaded that the property belonging to the Government of Bombay, was allotted by the Revenue Department in favour of the Trust for carrying on its objectives, by order bearing no.7771/B/45 dated 6/12/1948, and accordingly, suit land bearing Survey No.164, Hissa No.1, 1-A(Part) CTS No.1100 admeasuring 18 acres 12 gunthas was made over it. It is also pleaded that the Trust paid a consideration of Rs.21,960/- to the Government of Bombay for grant of the suit land in their favour and the necessary formalities were completed. The specific stand of the defendants is, from this date, they are in occupation, use and possession of the entire suit property and they are running educational activities, by conducting classes in English Medium for the students from Nursery to Higher Secondary and the following schools are run in Marathi medium

- (a) pre-primary school in the name of Balankar having about 400 students.
- (b) Primary school in the name of Balniketan having about 800 students.

(c) High School in the name of Dr.T.R. Naravane High School having about 1500 students.

Apart from this, it was stated that the Trust also run a School for deaf and dumb in the name and style as 'Sadaphuli' for 80 students and one School is also run for mentally retarded children in name of Dr.Kusum Naravane. The defendants specifically pleaded that the first School building was constructed by the Trust in June, 1965 and at present, there are 4 buildings of the school which accommodate 2700 students.

11 The defendants admitted that there was vacant open land, which was not put in use for the educational purposes at the inception, and therefore, it was decided to be utilized for encouraging the students in learning field, farming and other agricultural activities. The suit property, being vast track of land and since the Trust was not able to take care of the same and maintain it, an agreement was entered into with the plaintiff on 1/4/1971, where he was appointed as "Farm Manager" and he was entrusted with the responsibility of taking care of the entire suit property and carrying on agricultural activities on behalf of the Trust. The agreement permitted the plaintiff to appropriate all the agricultural produce to himself and to incur all expenses, but in return, pay a sum of Rs.5,000/- p.a. by way of Royalty to the Trust. It is the case of the defendant in the written statement, that the agreement was initially for a period of one year but the same was renewable every year by consensus, except that the

amount of Rs.5,000/- was subsequently hiked to Rs.8,000/- p.a. The agreement was renewed from time to time and the last renewal was on 1/4/1979, when the term of the agreement expired on 31/3/1980. The defendants specifically pleaded that the agreement contained a stipulation that the Trust shall have right to terminate the agreement, if there is a breach of condition and since the plaintiff failed to pay the amount of royalty regularly, the Trust addressed a letter on 6/6/1980 to the plaintiff and terminated the agreement.

The defendants case before the trial Court, as specifically pleaded is, the entire suit land was under Industrial Reservation as per Development plan of Bombay Municipal Corporation and hence it was not developed, but the Bombay Municipal Corporation by its notification dated 24/5/1976 de-reserved the said plot and changed it's user to 'Residential Zone'. The defendant also specifically pleaded that the Charity Commissioner, Konkan Division by his order dated 11/5/1987, exempted part of the suit plot of land under ULC Act, for development and construction of a School by the Trust. It is also the case of the defendants that the Trust applied for sanction of building plans to the Planning Authority and pursuant thereto, constructed a school building by incurring expenses of Rs.80 lakhs and reliance was placed upon the Commencement Certificate, the IOD and the Occupation Certificate issued by the Municipal Corporation.

12 The case of the defendant is, the original plaintiff, since the termination of the agreement was never in possession of the suit land, and even though he stake his residential address to be of the suit property, his address in the Government record is distinct. It is further pleaded that the original plaintiff tried to get his name entered in the record of right but the Tahsildar, Borivali, rejected the application on 26/2/1988. Further, the plea that he is the tenant of the suit property is also rejected and it was open for the plaintiff to file a declaratory suit in appropriate court, claiming that he is a tenant but this was never done.

 In the wake of the aforesaid pleading, the defendant sought dismissal of the suit filed by the plaintiff.

13 The Suit came to be adjudicated in light of the issues settled to the following effect :-

- (1) Do the Plaintiffs prove that since prior to 1957 till 1995 the original Plaintiff and thereafter present plaintiffs were in lawful possession of the suit property i.e. land admeasuring 18 acre, 12 gunthas bearing CTS No.1100 at Village Kandivli, Taluka Borivali.
- (2) Do the Plaintiffs prove that the Agreement between the original Plaintiff and the defendants was sham and bogus document?
- (3) Do the defendants prove that the Suit is not maintainable for want of Sanction from the Charity Commissioner under Section 50 of Bombay Public Trusts Act, 1959?

14 The issue which was considered to be germane to the matter, being whether the agreement was tenancy agreement or whether it was an agreement appointing the plaintiff as 'Manager', and whether the notice given to him, was valid and proper.

 In order to establish it's case, the plaintiffs entered into the witness box through his son, Sanjeev H. Tiwari, who on his demise, replaced him the proceedings. The plaintiff also examined four other witnesses including the Senior Manager of Bank of Baroda as well as the personnel of the Bank who deposed that there was a joint account in the Bank opened under the signature of G.K. Naravane of the Trust and Shri H.V. Tiwari.

 The plaintiff also examined one Somnath Mishra, close acquaintance of Shri H.V. Tiwari, the original plaintiff, from whom this witness used to purchase fresh vegetables.

 The defendant examined himself as DW 1 in order to traverse the case of the plaintiff that he was inducted by the Trust as a tenant. The President of the Trust Umesh Naravane was also examined to establish the necessary permissions obtained for use of the suit land, and to throw light upon its present status. One pupil of Shri Ramkisan Secondary School, conducted by defendant trust who was admitted in the School in the year 1968 to 1972, was also examined by the defendant. The oral evidence to the above effect thus form the relevant material for the learned Judge to determine the issue that arises for consideration in the

Suit.

15 The learned counsel Mr.Godbole had vehemently objected to the maintenance of the Suit by the plaintiff, seeking simplicitor injunction, in absence of prayer for declaration of title. He submitted that the original plaintiff merely sought an injunction without making a prayer for declaration of his status as a tenant. He has placed reliance upon the decision of the Apex Court in case of Anathula Sudhakar vs.P. Buchi Reddy, 2011(6) All M.R.681, to take forward his submission, that such a Suit is not maintainable. Mr.Godbole would further submit, that the declaration as a tenant was very much warranted by the plaintiff, and in that case, he could not have invoked the jurisdiction of the civil court, as Section 41 of the Presidency Small Causes Act, 1882 created a bar of jurisdiction in the Civil Court in entertaining any issue relating to recovery of possession. In absence of a declaration as a tenant, which can be only granted and conferred by the Court of Small Causes, the relief sought could not have been granted, is the argument. The learned counsel would rely upon a decision of Mansukhlal Dhanraj Jain Vs. Eknath Vitthal Ogale (1995) 2 SCC 665, to submit that such a Suit was not maintainable.

The argument of Mr.Godbole is also focused on the dichotomy created by the plaintiff in the entire proceedings, since on one hand, he claim to be a tenant inducted and on the other hand, he plead that he was a lessee under Section 105 of the

Transfer of Property Act, and according to the learned counsel, this aspect has been clearly ignored by the trial Court. He would submit that the original plaintiff, neither in the plaint nor in the affidavit of evidence pleaded the case of landlord-tenant relationship under Section 105 of the Transfer of Property Act and in absence of any foundation in the pleadings, the City Civil Court ought not to have considered and accepted the case that the relationship between the plaintiff and the defendant Nos.4 to 4(d) and 8 and 9 would be governed by Section 105 of the Transfer of Property act, on an erroneous presumption that the agreement dated 01/04/1973 was in fact ‘ a lease agreement’, creating leasehold rights over the suit property in favour of the original plaintiff.

The argument is, the City Civil Court has proceeded not only to entertain the suit, but decreed the same in favour of the original plaintiff, without having jurisdiction over the subject matter and, hence, the judgment and decree is void ab initio.

16 By appreciating the evidence on record, the learned counsel would submit that the trial Court has reached an erroneous conclusion, despite lack of documentary evidence to show that the plaintiff was in possession, though the Court has rendered a categorical finding regarding possession of the Trust as also original defendant Nos.5 to 7 over the suit property. The sine qua non for protection of possessive right adverse to the admitted possession of the appellant Trust and defendant Nos.5

to 7, ought to have been proved, which factor is completely ignored, is his submission.

Apart from this, the unreliability of evidence of pw 1 who deposed on behalf of the original plaintiff, being unaware of the events, since he was a young child at the time of alleged relationship established with the appellant is also projected as one of the ground.

The learned counsel would also focus upon the impermissibility to grant an injunction, without specifying/identifying the property for which the restraint is imposed.

17 Opposing the arguments of Mr.Godbole, the learned counsel Ms.Poonam Madhwani for the respondent, would submit that no objection was raised to the maintainability of the suit before the trial Court and even no ground to that effect is raised in the memo of appeal.

The learned counsel would submit that though Section 19(i) of the Presidency Small Causes Court Act, the Small Causes Court shall have no jurisdiction, but she would submit that the person who has been in continuous possession of the suit property can seek an injunction in the Civil Court even against the true owner of the property. She would submit that the reliefs claimed by the plaintiff do not come within the ambit of Section 19 or Section 70 of the Bombay Public Trust Act, 1950 and, therefore, the bar of Section 80 would not apply to the present

case.

The learned counsel would submit that the suit property, an agricultural land, was in possession of the original plaintiff and, thereafter, his heirs and legal representatives and the defendants had attempted to dispossess the plaintiff and denied that the original plaintiff was the tenant. She would heavily rely upon the agreement between the plaintiff and the defendants to carry out agricultural activities on the suit land, which clearly reflect the intention of the parties.

Supporting documents like the certificate issued by Bank of Baroda where the plaintiff obtained loan for carrying his venture as well as the ration card, issued in the name of the original plaintiff, in the year 1985 to 1986 is projected to be the conclusive proof of possession of the plaintiff over the suit property.

The learned counsel would submit that the issue of letter of termination dated 06/01/1980 by the defendants to the original plaintiff, will prove that the original plaintiff was in possession of the suit land and no proceedings are taken for evicting him, by the defendant No.4(d). The underlying intention of the parties to create lease in respect of the suit property is also highlighted by the learned counsel Ms.Madhwani. She would submit that the plaintiffs were able to demonstrate a case for grant of injunction before the trial Court and, therefore, it

was granted.

18 In light of the counter-submissions advanced, in support of the impugned judgment and opposing the same, I have perused the paper-book of the appeal in its entirety.

When the evidence on record is carefully perused, it can be seen that the plaintiff entered into witness box through Sanjiv Tiwari, the son of the original plaintiff, who deposed as under :-

"I say that since prior to 1957 till time of his death, the Deceased was in exclusive possession of the suit land as an agricultural tenant thereof and was carrying on agricultural operations for raising crops like rice, vegetables and grass till his death on 31.1.1995 except the small portion of land on which school was run. After filing suit the Defendants illegally dispossessed him of a portion of land as mentioned hereinafter. I say that right from the beginning all expenses of cultivation were being borne by the Deceased himself and the Trust has never contributed anything towards the costs of cultivation of the suit land. Ever since the beginning of the tenancy prior to 1957, the Deceased was regularly paying Rs.5,000/- per year as a rent to the Trust which was increased to Rs.8,000/- per year. This amount of rent was paid to Dr. Trimbak Naravane during his life time and after his death, it was received by his wife Mrs. Naravane. I say that Deceased has paid rent upto 1986. However, because of the provisions of the Bombay Tenancy and Agricultural Land Act, 1948 (for brevity Tenancy Act), no rent receipts were ever issued by the Trustees. I further say that some of the arrears of rent were deposited by the Deceased in the Bank Maharashtra, Kandivli (W) Branch and the Trust has withdrawn the same. I produce a copy of letter dated 16.10.1990 to show that an account was opened in the Bank of Maharashtra in the joint name of the Deceased and the brother's son of late Shri Trimbak Naravane and the

deceased used to deposit the amount of the rent in the bank and the brother's son by name of Gajanan Naravane of Dr. Naravane used to withdraw the amount deposited by the Deceased in the Bank. I say that the said account was saving account No.219. My father wrote letter dated 16.10.1990 to the said Bank. The copy of said letter with acknowledgment of Bank is produced may be marked as Exhibit "E". I say that the deceased and thereafter Plaintiffs are doing cultivation on the suit land with the help of labourers and we are selling the vegetables to vegetable Vendors and the deceased also used to sell vegetable grown at suit land to the vegetable Vendors and used to sell portion of it himself"

The said witness also stated that his deceased father/the original plaintiff had planted various trees on suit land and also sunk a well at his own cost in the suit land and also installed two water pumps for watering the crops and had also constructed a structure admeasuring 15 x 15, which was used for his residence and after his death, the present plaintiffs are using the same. Apart from this, there is also a mention of construction of a cattle shed and independent pump room on the spot.

19 In the cross-examination, the witness has given his date of birth as 1/7/1971, which indicate that at the time of the execution of the agreement, between the Trust and his father, on 1/4/1976, he was a minor. He deposed that his family belongs to Deviya District in State of U.P and his mother lives at the native place. He admitted that he migrated from Mumbai in 1982 to his native place and again came back to Mumbai in the year 1990.

On being asked, in the cross-examination, as to when

his father came to Mumbai, he was unable to give any response, but deposed that whatever facts he was stating, were presented to him through his father. He gave the following admission in his cross-examination.

“The structure of size 15 x 15 was constructed before 1957. It was true that from my father, I have learnt that the structure was constructed prior to 1957. There are no documents to show that the structure was standing at the suit that there was a tax levied over this structure of size 15 x 15”

He denied the specific suggestion that his father was merely a paid servant of defendant no.4 and that he had no right in the suit property after the agreement period was over. He denied that his father did not carry out any construction like a shade, water pump on the suit property.

20 Appreciating the evidence of this witness, it is apparent that he has not produced any documentary evidence establishing the possession and he asserted and deposed on the basis of his personal knowledge, that prior to 1961, his father was carrying out agricultural operations and was in exclusive possession of the suit land. He also deposed about the minute details such as payment of rent and the crops taken by his father and also about the fact that the expenses of cultivation were borne by the original plaintiff and the Trust never contributed to the cost of cultivation. This witness asserted the intention between

the parties i.e. the appellant Trust and his father, without being a party to it and described the said agreement as 'camouflage agreement' so as to avoid the application of the provision of BT & AL Act, 1948.

The events narrated by PW 1 could not have been within his personal knowledge as he was a young boy then and he has not disclosed his involvement in the entire episode or his source of knowledge on the basis of which he deposed.

Despite this, his testimony is accepted by the trial Court and he is considered as a star witness in proving the possession of the plaintiff and in discerning the intention between the parties in executing the agreement dated 01/04/1973. The evidence of the said witness ought to be appreciated with the corroborating and cumulative circumstances brought on record by the defendants and their witnesses. The testimony of this witness, hence cannot be accepted as a truthful version, governing the relationship between the parties.

21 One Shobhnath Ramnaresh Mishra is also examined by the plaintiffs in support of their case and he deposed that he was acquainted with Shri Harikrishna Tiwari, who was having a Gala in the municipal vegetable market and he used to cultivate vegetables on the land belonging to Ram Krishna Shikshan Mandal, Mumbai and the witness used to purchase vegetables from him. In the cross-examination, he admitted to have

purchased vegetables from the original plaintiff, Shri Harikrishna Tiwari.

The testimony of this witness, in no way establish the plaintiff's possession, but only show that he was a vendor of fruits and vegetables.

As against this, when the evidence adduced on behalf of the defendants is perused, the defendant no.1, Shri V.M.Shirke, who was the trustee of the Trust since 1977 and continued to hold the position, entered the witness box. He is a witness, who had knowledge about the past as well as the present status of the suit property, as he discharged duties as Principal of Ramkrishna Shikshan Vidyalaya from 1965 onwards and he stated that the institution was thereafter known as Dr.T.R. Naravane Vidyalaya and he retired from the services of the school of the defendant Trust in 1987.

He deposed about the grant in favour of the Trust by the Government on 6/12/1948 in respect of land admeasuring 18 acres 12 goonthas bearing survey no.164, Hissa No.1/1A (Part), CTS No.11100 to the said Trustee. In his evidence, he state that by way of consideration, the Trust paid sum of Rs.21,960/- and he produced the receipt to that effect dated 15/2/1951. DW 1, Shri Shirke deposed as under :-

"I say that when I took charge of the school, in 1965, the entire area was a vast and seemingly immeasurable plot of land, and save and except for the small cowshed which function as a school building for the students, there was not

structure in sight far and wide. I say that there was also no agricultural activity of any kind being carried out then and the entire area continue to give the appearance of a forest land. I say that I had begun to reside in the near by area at Kandivli (West) since 1958 and I can say with the certain amount of conviction that the plaintiff was certainly no where on the scene when the defendant Trust began its activities on the suit plot of land”

About the applicability of the provisions of Bombay Tenancy and Agricultural Act, 1948, he made the following statement in his affidavit :-

“I say that in exercise of the powers conferred by Section 88(b) of the Bombay Tenancy and Agriculturals Act, 1948, the Government of Bombay specified the area of village Kandivali in the district of Bombay suburban and taluka Borivali as being reserved for non-agricultural and industrial development I am producing a copy of the extract of the Bombay Government Gazette wherein the above notification appeared dated April 04, 1957. I am also producing the certified copies of the plan issued by the District Inspector of Land Records in respect of the suit property whereon the name of the Defendant Trust appears as that of holder and the same may be taken on record and marked as Exhibit and hereto”

22 Shri V.M.Shirke, DW 1, produced on record, copy of the Sanad dated 7/5/1963. He further deposed that by an agreement dated 7/5/1963 entered into by Shri Naravane, Trustee of the defendant Trust with the Mamlatdar, Borivali, vide Rule 43, indenting to become occupants of the land as mentioned therein, including in a development scheme or any

other special cases and depose that :-

“The said Trust has remained continuously uninterruptedly in possession of the said entire land admeasuring about 18 acres and 12 gunthas and various stages upon accumulation of funds, the said Defendant trust endeavored to construct structure thereupon.”

DW 1 highlighted the educational development of the Trust, to cater to the needs of the students of the rural area of the Society, being inspired by Gandhian principles of ideology of self service known as Swayam Sevak.

23 This witness give an insight about the background of the agreement entered into between the plaintiff as ‘farm manager’ and stated as under :-

“I say that the Defendant Trust school curriculum attending a subject called as a "Karya-anubhav" "work experience" and students during this period were taught and infact practically pursued agricultural activities. I say that our school maintained its own agricultural implements that is pick axes, spades, farrows, urns all of which were kept locked in a huge wooden box which stood on a platform in the school building. The students would after usage of the same, wash the said implements in the pond as it then was, and thereafter the implement would be locked up in the wooden box and the same was secured and fastened with a huge bolt and lock. I say that the pond thereafter was filled and the pond area was reclaimed.

I say that the very objective of Defendant Trust school being entirely different from dogmatic standards, then and now prevalent, Defendant Trust pupils, though having their origins in humble and even delinquent backgrounds, have

today progressed to become excellent and conscientious citizens”.

24 DW 1 deposed about the appointment of Shri Arun Naravane as a Farm Manager for taking care of the crops and effectively managing such portion of plot of land, as have been allotted to agricultural activities. He stated that, Shri Arun Naravane engaged the services of Labour hand and the original plaintiff Shri Harikisan Tiwari also used to purchase vegetables produced from the said plot of land from Arun Naravane and act as an agent for selling the produce in the open market. However, at subsequent point of time, when Arun Naravane attempted to claim ownership over the said plot of land, his services were terminated and the original plaintiff was thought as a substitute and therefore, by agreement dated 1/4/1973, he was appointed as ‘Farm Manager’ under the signature of personal trustees of the defendant trust. Shri Shirke, deposed about the termination of services of Harikisan Tiwari by issuance of a letter on 6/6/1980 and he assertively state that the 7/12 extract of the suit property and the mutation entries reflected the sole and exclusive ownership and possession of the defendant Trust. The 7/12 extract issued on 6/6/1980 and mutation entry dated 12/3/1958 and 13/10/1971 is exhibited through the said witness.

25 About the development of the suit property at subsequent point of time, DW 1 has stated as under :-

“I say that the Defendant Trust had entered into certain transactions for development of the suit property sometime in 1986 whereafter an Agreement for sale was executed with one M/s. Dattani Construction for development. I say that the said M/s. Dattani Construction had in their Agreement specifically mentioned a list of all the names of the occupants of the suit property and I say that it is clear from the said documents that the name of the Original Plaintiff finds no place therein. I am producing the copy of the Sanctioned Plans the I.O.D. Commencement Certificate, issued by the Bombay Municipal Corporation in respect of the schools of the Ramkrishna Shikshan Mandal.

I say that the vast tract of land belonging to the Defendant Trust is a potential goldmine for builders and developers and in a bid to gain maximum mileage from the same, the Plaintiff filed the above false and vexatious suit in 1990.”

26 As per DW 1, by an order dated 11/5/1985, the land bearing survey no.164A of village Kandivali is exempted from the provisions of Chapter 3 of the Urban Land (Ceiling and Regulation) Act 1976 and on 28/11/1986, the defendant Trust was called upon to make payment of N.A. Assessment for the year 1986-87 to the tune of Rs.1,39,504.68/-, which was paid on 31/3/1987. At the end of his affidavit, he make the following assertion :

“I say that the Original Plaintiff had thus been merely discharging his duties as an employee of the Defendant Trust and had never been in possession of any part of the suit land. I say that till date, the Ramkrishan Shikshan Mandal continues to occupy the entire suit property”

27 Another Trustee, Shri Umesh Naravane, who is conversant with the affairs of the Trust, also stepped into the witness box, supporting the stand of the defendant Trust, in his capacity as it's President. He produced on record the balance sheet of the trust for the period commencing from 1955 to 1980, wherein the income of the Trust is mentioned to be derived from the royalty received from sale of vegetables, grown on the suit property, and sold by Arun Naravane at earlier point of time and later by the original plaintiff Shri H.B. Tiwari. He also produced on record the balance sheets referring to the expenses incurred by the Trust on agricultural activities, which are audited.

Apart, this witness also brought on record the audit copy of the statement for the year 1951-1965, showing the year wise expenditure incurred by the Trust for development of it's land in Survey No.164-1A of Kandivali, which reflect the amount spend for clearing the ground level and filling of land as well as miscellaneous expenses. Further, the payments for carrying repairs to the school building is also proved through this witness. The repairs and extension work carried out in the year 1979 and the expenses incurred in the said work and paid by the defendants, by way of cheque is also brought on record. He gives the minute details of various expenses incurred for carrying out repairs to the building, repairs to the furniture, equipments, miscellaneous expenses for school garden etc. Apart from this,

the building was subjected to property tax from time to time and the witness brought on record the bills along with the payments made to MCGM for Assessment Year 1973 to 2004. DW 2, specifically state as under :-

“I say that the some portion of the said suit property is used by the schools conducted by Defendant Trust and also by various other different schools for conducting their school events and for holding inter school competition. I say that the Defendant Trust has therefore made representation to District Sport Officer of Mumbai Suburban District. I say that after repeated representation the said District Sport Officer, on the basis of report submitted by General Administration Department as also Public Recreation Department and Sports Department had sanctioned a sum of Rs. 19,000/- for the academic year 2002-03, for leveling of playground to Defendant Trust. I am producing the copy of the said order dated 13th October 2002, duly signed by District sport Officer, of Mumbai Suburban received by the Defendant Trust. I say that the Defendant Trust had also decided to construct the compound wall along with the boundary of the said suit property and made a request to District Sport Officer, of Mumbai Suburban District to provide certificate for sanction of grant by Government of Maharashtra. I say that on the said representation on 1st January 2004, District Sport Officer, of Mumbai Suburban, sanctioned sum of Rs.1,00,000/- as additional grant for construction of compound wall along the school ground, I am producing the copy of the said order dated 1st January 2004, issued by District Sport Officer of Mumbai Suburban to District Trust”

I say that the Defendant Trust has thus been always in possession and occupation of the suit property and has taken all necessary steps towards the safeguard and upkeep of the said property.”

28 Shri Shashikant Sambhaji Sawant, a pupil of Shree Ramkrishna Shikshan Mandal Vidyalaya is also examined by the

defendants to bring on record, the use of the agricultural field by the Trust for a curriculum, being “karyanubhav”, and he deposed as under :-

“I say that we often conducted auction for sale of vegetables grown by us in the school itself. However, with the passage of time, the yield surpassed our requirement and we were then informed that the surplus vegetables and other yield would be sold in the open market.

I say that thereafter one Shri Arun Naravane and subsequently one Harikishan Bhayya, were in charge of selling the vegetables grown by us students, in the open market”.

I say that our school had its own pair of bullock and agricultural implements including the plough, and in fact our school was well equipped and self sufficient in carrying out all agricultural activities. My father and I would ourselves borrow the various agricultural implement and bullock in the cultivation of our own plot of land admeasuring 2 acres”.

29 The pivotal document i.e. the agreement executed by the Trust in favour of the plaintiff on 01/04/1973 will have to be construed in light of the above evidence, brought on record.

The plaintiff deposed through his son Sanjeev Tiwari, who filed his affidavit of evidence, but has failed to produce any documentary record qua possession and yet asserted that the evidence is given by him on personal knowledge that prior to 1953, his father was carrying on agricultural operations and was in exclusive possession of the Suit land and also spoke about the further particulars such as payment of loan etc. prior to 1957 and upto 1986. He specifically asserted that the intention of the Trust

and the original plaintiff while executing the 'Farm Agreement' was to execute a camouflage agreement, so as to avoid application of the provisions of Bombay Tenancy and Agricultural Land Act, 1948.

The said witness, who is son of the original plaintiff could not have deposed about the said fact, which was only within the knowledge of his late father and the Trustees of the appellant Trust, and since he has not disclosed that he was involved in the entire process, his evidence cannot be accepted as to what actually transpired at the relevant time, since on 1/4/1973, when the agreement was executed, he was a minor and even Shri V.M. Shirke, the then Trustee of the appellant Trust in his affidavit dated 6/9/2005 have referred to him as a young child. No other witness is examined by the plaintiff to establish the nature of transaction, being a camouflage and the trial Court has therefore, erred in completely falling back on the said witness in ascertaining the true nature/evidence of the agreement dated 1/4/1973 and the relationship of the plaintiff with the Trust.

30 Another aspect which has been lost sight of, by the Trial Court is that the original plaintiff had made an application for entering its name in the record of rights, qua the suit property, which came to be rejected on 26/2/1980, and no steps were taken to assail the said rejection. This is indicative of the fact that the suit property never stood mutated in the name of the plaintiff. The failure on part of the plaintiff to get his name recorded in the

record of rights in respect of the suit property and his subsequent failure to file a declaratory suit for declaration of his alleged right as a tenant over the suit property ought to have been given due weightage in granting him the relief, but this aspect has been completely ignored, while a finding is being rendered that the original plaintiff was a tenant, having exclusive possession over portion of the suit property. At the end of the day, there was no record produced about any tenancy/possessory right of the original plaintiff to grant him the relief sought in the plaint.

31 The learned Trial Court accepted the case of the plaintiff that the agreement in question, titled as “Agreement for appointment of agricultural farm manager” was in fact a camouflage. Though the original plaintiff set up a case that between the plaintiff and the appellant Trust, there was a pre-existing tenancy relation ever since the year 1957 and the agreement dated 1/4/1973 was only a ruse and was only entered so as to avoid the applicability of the provisions of the BT & AL Act, 1948. However, even this argument deserve to be deflated, since my attention is invited to the provisions of the Act of 1948, which, in fact were never made applicable to the Suit property by virtue of notification issued u/s.88 (1)(b) of the said Act. The learned Judge of the Civil Court despite recording that the counsel for the plaintiff had categorically conceded to the said position, and accepting the fact that the suit property was excluded from the provisions of BT & AL Act, construed the

terms of the agreement to be a camouflage which reflect complete non-application of mind.

32 It is trite position of law that while granting an injunction or refusing the same, the Court must specify, with degree of certainty, the area of its operation, and particularly in a case like this, when the Suit land in question was a large track of land over 18 acres and 12 gunthas, no authentication plan showing the various portion of the vast suit property and the respective areas/status was ever brought on record. The trial Court has held that the plaintiff was in possession from 1957 till 1995 on the basis of the agreement covering land admeasuring 18 acres 12 gunthas, while issue no.1 was framed to deal with the period as well as the extent of land over which the plaintiff claim to be in possession of, the trial Court in order to answer the issue has read two agreements, to render a finding on the same, being the agreement filed by the plaintiff (Exhibit 11) and another filed by the defendants (Exhibit-52) in juxta position. Accepting the version of the plaintiff's witness PW 1 to the effect that prior to 1948, land Survey No.164 was admeasuring 36 acres and 4 ½ gounthas, being a forest land, land admeasuring 18 acres, 12 gounthas, was released in favour of the defendant Trust by Government. Recording the plaintiff's case that since 19 acres land was not required for school activities, the original plaintiff was inducted as a tenant to carry all agricultural operations, without giving the details about the extent of the land.

Even perusal of the agreement as 'farm Manager', it refers to none of the details. In the plaint, the plaintiff referred to the suit land as the agricultural land without specifying what part of the land was engaged in agricultural operations. The property register card and extract appended to the plaint referred to the entire land 18 acres and 12 gunthas, and the map of the Suit land do not distinguish the agricultural area from the main property which was assigned to the defendant. The plaint, therefore, is silent upon the area against which a relief is sought and in the prayer clause, claim that he was in possession of the entire suit land from Survey No.164, Hissa No.1/1-A, bearing CTS No.1100 of village Kandivli, Taluka Borivali in Mumbai Suburban district, save and except portion marked in red colour on the map.

The defendants through their evidence has brought on record construction of various buildings on the suit land from where the school is functioning and this can be read into the evidence brought on record through DW 1 and DW 2.

In utter ignorance of the above, the Suit has been allowed in absence of identifying the property, though in para 50 of the judgment, it is recorded that an injunction could not be granted in respect of the entire portion of the suit property, but is granted only in respect of the portion, which was in possession of the original defendant nos.5 to 7, without determining as to what was the extent of land that was under cultivation. As according to the defendants, the plaintiff was already evicted from the suit land

and he was not cultivating any portion of the land, a decree granting an unspecified open ended injunction, cannot therefore be sustained and deserve to be set aside.

33 Dealing with the argument about maintainability of the suit, seeking simplicitor injunction in absence of prayer for declaration of title, I have considered the rival contentions.

A close look at the prayers in the plaint makes it evident that the original plaintiff had sought simplicitor injunction/ permanent injunction against the original defendants either by themselves or through their servants, agents or contractors from entering upon the 'suit land' and/or interfering with the original plaintiff's purported peaceful possession and enjoyment thereof, save and except for the portion marked in red colour on the map annexed to the plaint at Exhibit B, otherwise than in accordance with due process of law.

Admittedly, the original plaintiff's claim of tenancy over the suit land is and was doubted by the defendants. The original defendant Nos. 4 to 4(d) and 8 and 9 have categorically denied the claim of the original plaintiff of being a 'Tenant' in respect of the Suit Land. Further, even the original defendant No. 5, 6 and 7 had categorically pleaded in their written statement, that the original plaintiff has absolutely no right, title and interest of whatsoever nature in or upon the suit land.

On the contrary, the original defendant Nos.4 to 4(d) and 8 and 9, categorically pleaded that the original plaintiff was only appointed as a 'Farm Manager' in respect of the suit property vide an Agreement dated 1st April 1973, which was subsequently terminated on 6th June 1980. Despite the same, neither the Original Plaintiff, nor his legal heirs, who were subsequently arrayed as Plaintiff Nos. 1(A) to 1(C) , ever chose to amend the Plaint so to seek a declaration of their title in respect of the Suit Land.

Thus, S.C. Suit No. 5551 of 1990 filed by the plaintiff, which simply sought a prayer for permanent injunction against the Original Defendants, without seeking declaration of title over the Suit Property, despite it's claim for injunction, being seriously doubted and being under cloud, a suit for simplicitor injunction is ex-facie not maintainable.

34 It has been consistently held by the Hon'ble Supreme Court, when a matter involves complicated questions of fact and law relating to title or a legal status claimed by the Original Plaintiff and disputed by the Original Defendants, the Court cannot decide the issue in a suit for mere injunction and the Plaintiff cannot maintain a suit for bare injunction, when his title is in question. The above well settled principle has been reiterated by the Hon'ble Supreme Court in the case of **Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594**, in the following words :-

“Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction is the remedy. Where the plaintiff's title is not in dispute or under cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simplicitor.

A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown.”

The aforesaid expression of law has been reiterated further in the case of *Jharkhand State Housing Board v. Didar Singh (2019) 17 SCC 692* and in the case of *T.V. Ramakrishna Reddy v. M. Mallappa 2021 SCC OnLine SC 674*.

In the present case, the original defendants had categorically raised a dispute to the plaintiffs' claim of alleged tenancy and had in fact, challenged the maintainability of the suit absent a declaration of it's claim of alleged tenancy.

In the wake of the above, the suit filed by the original plaintiff, seeking simplicitor injunction was not maintainable and ought to have been dismissed.

35 Now let me deal with the argument revolving around the bar created by virtue of Section 41 of the Presidency Small Causes Courts Act.

Section 41 of the Presidency Small Causes Courts Act, 1882 ousts the jurisdiction of all Civil Courts, including the High Court, and it reads as under:

"41. (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent thereof, irrespective of the value of the subject-matter of such suits or proceedings."

36 The case of the original plaintiff's before the learned Judge of the City Civil Court was that the late Mr. Harikrishna Tiwari had been in exclusive possession of the Suit Property as an agricultural tenant and had been carrying out cultivation till his death in 1995. A case of possessory right over the Suit Property in capacity of an agricultural tenant was sought to be set up by the Original Plaintiff in the plaint.

By relying upon the Notifications issued under section 88(1)(b) of the BT & AL Act, 1948, the original defendants had argued that the lands in question were excluded from the purview of the BT & AL Act, 1948 and therefore, the original plaintiff could not have been an agricultural tenant, Pertinently, the learned Advocate appearing on behalf of the original plaintiff had categorically conceded to this position in paragraph 45 of the Impugned Judgment, which record the submission of the learned Advocate for the original plaintiff as also of the learned Advocate appearing for the original defendant Nos. 4 to 4(d) and 8 and 9 and has come to a conclusion that the

Suit Property was exempted from the provisions of the BT & AL Act, 1948. In fact, the original plaintiff has neither claimed, nor sought a declaration of the status of his tenancy under Section 70(b) of the BT & AL Act, 1948.

Despite the above, the City Civil Court, contrary to its own findings and also to the expressed submission of the counsel for the original plaintiff, erroneously proceed to hold, that for the purpose of deriving the meaning or deducing the meaning of the word 'Tenant', one has to refer to the BT & AL Act, 1948. It was impermissible for the Court below, to refer to and rely upon the meaning of the word 'Tenant' as defined in BT & AL Act, 1948 when the provisions of the said Act were admittedly not applicable to the Suit Property and an admission to that effect, being given on behalf of the original plaintiff and even the learned Judge himself, coming to a conclusion that the Suit Property was excluded from the provisions of the BT & AL Act, 1948.

Such course of action adopted by the learned trial Judge is completely contrary to the settled position to the effect, that the definitions under one particular enactment, ha no applicability, qua the other and it should not be imported, while adjudicating and interpreting other statutes.

37 The impugned judgment erroneously proceed on the basis that the relationship between the original defendant Nos. 4

to 4(d) and 8 and 9 would be governed by the provisions of Section 105 of the Transfer of Property Act, 1882, on the presumption that the Agreement dated 1st April 1973 was in fact a "Lease Agreement" and thus created leasehold rights over the 'Suit Property in favour of the original plaintiff. Terming the same as a "Camouflage Agreement" and accepting the case of the original plaintiff, that the agreement in question was intended, as an agreement for agricultural farm manager services, only to avoid the application of the Bombay Tenancy and Agricultural Lands Act, 1948 and for which reason rent receipts were purportedly not issued, which is ex facie contrary to the express language of the said Agreement dated 1st April 1973, and in the absence any proof being produced or lead in that regard by the original plaintiff. On perusal of Clause 10 of the said License Agreement expressly states that "Nothing herein above contained shall be deemed to construct as creating any rights of or under leave and license or otherwise of Tenancy in favour of THE FARM MANAGER in respect of work done by him under the terms of this Agreement

Such a finding rendered in the impugned judgment, is in the teeth of Clause 10 of the said Agreement and clearly reflects a degree of perversity and non-application of mind.

38 De-hors, the recitals in the agreement, such a finding being ex-facie erroneous, the moment the Plaintiffs had

attempted to set up a case solely on the basis of alleged tenancy, especially governed by Section 105 of the Transfer of Property Act, 1882, the learned Judge of the City Civil Court would stand divested of the jurisdiction to entertain such a dispute between landlord and tenant in view of Section 41 of the Presidency Small Causes Court Act, 1882. The City Civil Court was not the competent court to entertain, try and decide a suit where an issue of tenancy was raised and had been specifically brought into issue, by the original defendants and duly recorded in the Impugned Judgment. It has been repeatedly held that the Presidency Small Causes Court is the special forum created by statute for adjudication upon a particular set of disputes including relating to possession inter se landlord' and 'tenant' and the jurisdiction of the civil court would therefore be ousted.

The impugned judgment, therefore, even suffers from lack of jurisdiction and deserve to be set aside.

The First Appeal, is allowed, in the wake of erroneous findings on fact rendered by the Trial Judge and also on misapplication of law. The erroneous finding on fact, which is perverse, as the evidence is not appreciated in it's proper perspective and, hence, the impugned judgment is quashed and set aside.

In view of disposal of Appeal, Interim Applications and Civil Application do not survive and are disposed off.

On the judgment being pronounced, the learned counsel for the respondent seek stay for a period of eight weeks.

Considering the said request, the judgment shall not be given effect to the period of eight weeks, from the date when the judgment is uploaded.

(SMT. BHARATI DANGRE, J.)