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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 10952 OF 2019**

DESMOND LAWRENCE GUDHINO

....PETITIONER

V/s.

TREVORE JOSEPH HAROLD DSOUZA  
AND ORS

....RESPONDENTS

Mr. V. T. Tulzapurkar Senior Advocate i/b Mr. A. J. Almeida Advocate  
for the Petitioner

Mr. G. S. Godbole i/b Atharva Dandekar a/w Mr. Shon Gadgil  
Advocate for Respondent nos. 4 & 5

**CORAM : NITIN W. SAMBRE, J.**

**DATE: JUNE 29, 2022.**

**P.C.:**

1) Heard Mr. Tulzapurkar, senior Advocate for the Petitioner and  
Mr. G. S. Godbole, counsel appearing for Respondent nos. 4 & 5.

2) Impugned in the Petition is an order dated 22/08/2019 passed  
by Maharashtra Revenue Tribunal, Mumbai (Hereinafter referred to  
as 'MRT' for the sake of brevity) rejecting Revision preferred by the  
Petitioner being TNC/REV/MUM/232/2017 whereby order dated  
14/09/2017 passed by Sub Divisional Officer (SDO) in Tenancy Case

No. 4/2016 came to be confirmed.

3) Facts necessary for deciding present Writ Petition are as under:

4) Subject matter of the Petition is land Survey no. 43 Hissa No.1 area 12 Acres 27 Gunthas located at village Gorai, Taluka-Borivali.

5) Respondents took out an Application for summary eviction of the Petitioner from aforesaid land under Section 84 of The Bombay Tenancy and Agricultural Lands Act, 1948 (Hereinafter referred to as 'the Act' for the sake of brevity). It was the case of the Respondents that they are original owner of aforesaid property which was purchased by Jude Romell and Domnic Romell vide conveyance executed on 14/09/2011 registered on 14/05/2012. It is claimed that by virtue of aforesaid conveyance deed, Jude Romell and Domnic Romell became owners of the suit property and accordingly mutation entry was effected in their name. Petitioner claims that his father was threatened with dispossession which has prompted him to initiate Suit No. 1697/1986 against the predecessor-in-title of Respondents herein. Prayer in the said Suit was protection of possession over the Suit land alleging that same was in Plaintiffs possession. It is also claimed that erroneously relief in relation to 5 acres instead of 12

acres 27 Gunthas was claimed. Thereafter, Petitioner initiated proceedings under Sections 32(G) and 70(b) of The Maharashtra Tenancy and Agricultural Lands Act, 1948 (Hereinafter referred to as 'the Act' for the sake of brevity) seeking declaration that he is protected tenant over 12 Acres 27 Gunthas based on the claim in the aforesaid Suit. Contentions therein were on the tillers day i.e. 01/04/1957, father of the Petitioner was in cultivating possession. As such, by virtue of Section 32 of the Act, Petitioner became protected tenant.

6) Said proceedings came to be rejected on 23/04/2010 which order was set aside by the Sub-Divisional Officer ('SDO' for the sake of brevity) in Appeal at the behest of Petitioner on 01/12/2011. It is also urged that Respondents since were intending to create third party interest, a public notice was issued, which has prompted him to file Suit No. 1562/2011 seeking simplicitor injunction. Property was transferred on 14/12/2011 in favour of Respondent nos. 4 & 5.

7) In the proceedings before the Maharashtra Revenue Tribunal ('MRT' for the sake of brevity) order of Sub-Divisional Officer was partly upset and the claim of the Petitioner as that of protected

tenant was accepted only to the extent of 5 Acres. Aforesaid order of the Tribunal was questioned by the Petitioner so also Respondent nos. 1 to 4 in Writ Petition No. 11886/2013 and 59/2014 respectively which were disposed of with following order:

“a) Writ Petition No. 11886 of 2013 is dismissed.

b) For the reasons aforesaid in Writ Petition No. 59 of 2014, Rule made absolute in terms of prayer clause (b).

In view of the fact that the status quo has been operation since 13<sup>th</sup> March, 2014 the parties in both the petitions shall maintain status quo for a period of eight weeks from today.”

Special Leave Petition filed by the Petitioner was withdrawn on 16/12/2015.

8) As in the pending Suit so also Petitioner’s claim under Section 70(b) of the Act was not accepted, proceedings under Section 84 of the Act were initiated on the file of SDO, Mumbai by the Respondents to the present Petition which were allowed vide order impugned dated 14/09/2017 confirmed by the impugned order of the Tribunal on 22/08/2019 wherein Revision of the Petitioner came to be dismissed. As such, this Petition.

9) Mr. Tulzapurkar, Senior counsel for the Petitioner would urge

that total area in the possession of the father of the Petitioner was 12.27 Acres Gat No. 43 Hissa No. 1, According to him, Petitioner's father was in settled possession of the Suit property on the tillers' day i.e. 01/04/1957. In Suit No. 1697/1986 as such, an injunction was ordered and the Decree was accordingly passed on 15/04/1987 not to dispossess them without following due process of law. He would claim that as civil Suit initiated by the Petitioner i.e. for declaration and injunction based on title accrued pursuant to principle of adverse possession being Suit No. 1562/2011 is pending, proceedings under Section 84(c) for summary eviction are not maintainable. According to him, Section 85 provides for summary eviction provided Respondents establishes their title to the property. By inviting attention of this Court to the order of the Tribunal passed in Tenancy Revision Number 34/B/2012, he would urge that 70(b) proceedings were allowed to the extent of 5 Acres portion of survey no. 43 i.e. aforesaid referred land in respect of which short cause Suit No. 1697/1986 was preferred and disposed of on 15/04/1986. Based on above his claim is there exist sufficient reason to hold that proceedings under Section 84 are not maintainable against the Petitioner, particularly when the Suit as regards title of the Petitioner

is already pending.

10) He urged that the provisions of the B.T. & A.L. Act, 1948 are not applicable to the land in question. So as to substantiate the claim, he has drawn support from the Judgment in the matters of **Suleman Hasham Memon Vs. Kashiram Bhau Patil**<sup>1</sup> and **Mallasha Sayabanna Mangonda V/s. Khadir Ajam Aherwadi**<sup>2</sup>.

11) Mr. Godbole, counsel appearing for the Respondents would invite attention of this Court to Judgment delivered in Writ Petition No. 11886/2013 and 59/2014 on 30/10/2015 so as to claim that the issue as regards right of the Petitioner under Section 70(b) of the Act is already concluded. In addition, his contentions are, there is no injunction in operation against the Respondent in the pending Suit initiated by the Petitioner.

12) The order impugned in the present petition is one passed by SDO and confirmed by the MRT thereby ordering summary eviction of the Petitioner. Fact remains that Petitioner's claim under Section 70(b) of the Act for declaring him as protected tenant was already rejected and the said rejection has attained finality before this Court

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<sup>1</sup> 1958 (60) BOMLR 1119

<sup>2</sup> 1969 MhLJ 753

in Writ Petition No. 11886/2013 and 59/2014. As far as the claim of the Petitioner that he became owner of the property by virtue of adverse possession as he continued to enjoy uninterrupted and un-objected settled possession over the Suit property is already subjudiced before the Civil Court. Fact remains that Petitioner cannot be termed to be a deemed tenant under Section 4 of the Act as he does not qualify the conditions mentioned therein. Petitioner's claim in the aforesaid Petition No. 11886/2013 was that he became absolute owner of the property by virtue of becoming tenant-purchasers.

13) As such, his contention that he became owner of the Suit property by way of adverse possession is already pending adjudication before the competent Civil Court at his behest and in said proceedings, there is no injunction in operation in favour of the Petitioner as against the Respondents.

14) While deciding the Writ Petition No. 11886/2013, this Court has already recorded a finding that the Petitioner has failed to demonstrate that on the tillers' day i.e. 01/04/1957, his father was in settled possession of the Suit property or was in cultivating

possession. Other observations are of which this Court required to take note is, Petitioner, even from the revenue record was unable to establish his lawful claim.

15) In a Suit wherein the claim for declaration of ownership by adverse possession is pending consideration being Suit No. 1562/2011, he has alleged that he is in possession of entire 12 Acres and 27 Gunthas of land. However, there is absence of any revenue record to substantiate the said claim.

16) In the aforesaid background, if the claim of the Respondents to be owner of the Suit property is appreciated, fact remains that there exist a deed of transfer in favour of Respondent nos. 4 & 5 from Respondent nos. 2 & 3 and as such, ownership based on such title is established by Respondents which has given them leverage to take out proceedings for summary eviction of the Petitioner. Once the Petitioner has failed to demonstrate that he has acquired ownership either under 32G proceedings or under the provisions of Transfer of Property Act, it has to be held that Petitioner's status is that of person in wrongful possession of the land or unauthorisedly occupying the same. As such, it appears that Respondents have

fulfilled requirement under Section 84 i.e. (a) by demonstrating their lawful title to the Suit property & (b) status of the Petitioner as that of unauthorized occupant and as such in wrongful possession, it has rightly prompted both the authorities below to record concurrent findings against the Petitioner.

17) Merely because there was Decree in Suit No. 1697/1986 by itself will not act as an embargo on the right of the Respondents to seek eviction of the Petitioner in accordance with law like in the present case under Section 84 of the Act. Petitioner as such in my opinion can establish his right in accordance with law in the pending Suit wherein his claim is for declaration that he has become owner of the Suit property by way of adverse possession.

18) In that view, no case for interference is made out. Petition as such fails, stands dismissed.

**[NITIN W. SAMBRE, J.]**

**Order corrected pursuant to speaking to the minutes order dated 12<sup>th</sup> August, 2022.**