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

SECOND APPEAL NO.957 OF 2022

Raghunath Sangram Gaikwad
(Died) Through L.Rs.
Muktabai Raghunath Gaikwad
(Died) Through L.Rs.
Shivaji Raghunath Gaikwad
and others.

... Appellants

Versus

Keshav Sangram Gaikwad
(Died) Through L.Rs.
Satish Keshavrao Gaikwad
and others

... Respondents

...

Mr. R.B. Deshmukh – Advocate for the appellants.

...

CORAM : GAURI GODSE, J.

DATE : 27th February, 2023

PER COURT :

1. This appeal is preferred by the defendants for challenging the concurrent judgment and decree declaring the respondents (plaintiffs) as owners of the suit property and restraining the appellants from disturbing possession of the plaintiffs over the suit land.
2. Respondents filed Regular Civil Suit No.198 of 1981 for declaration and injunction. The trial Court framed an issue on

the claim of the plaintiffs as owners of the suit land. The appellants had pleaded that they are tenants in respect of the suit property, and that, one of the original landlord Shankarrao had agreed to sell the suit land to defendant no.1 -Raghunath. Trial Court after examining the evidence on record held that the plaintiffs had proved the ownership of deceased Keshav on the suit land as well as their possession over the suit land on the basis of agreement executed by Shankarrao on 4th July, 1979. The trial Court disbelieved the case of the appellants that they were in possession as tenant (bataidar) of the suit land as well as disbelieved the case of the appellants that Shankarrao agreed to sell the suit land to deceased Raghunath (defendant no.1). Thus, the trial Court decreed the suit by accepting the ownership rights of the plaintiffs on the suit land and also granted decree of injunction.

3. Appellants being aggrieved by the said decree preferred Regular Civil Appeal No.47 of 2009. The first appellate Court also framed points for determination on the issue of title of the plaintiffs as well as the issue with respect to the claim of the appellants of being in possession on the basis of agreement and

tenancy rights. First Appellate Court after re-examining the evidence has confirmed the decree passed by the trial Court. Hence, this second appeal.

4. Learned counsel appearing for the appellants submitted that the appellants had specifically pleaded that they were tenants of the suit land and hence being tenants, they were in possession of the suit land. It was submitted that since the specific plea was raised in respect of tenancy rights, the trial Court ought to have referred the issue of tenancy in view of section 99A of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (“the Tenancy Act”). He further submitted that in view of the claim of the appellants that they were tenants in respect of the suit property, there is bar under section 99 of the Tenancy Act and the Civil Court had no jurisdiction to decide and settle the issue in the suit. In support of his submissions, he relied upon the decision of this Court in the case of *Shaikh Kalimulla Niyamatmiyan (Died) and another Vs. Mohammad Abdul Sattar Md. Abdul Gafur and others*¹. By relying upon the said decision, he submitted that once the issue of tenancy is raised, the Civil

1 Writ Petition No.4819 of 2021

Court was under obligation to make reference to the Tenancy Court for decision with respect to the tenancy rights. He, therefore, submitted that question of law arises in the second appeal and second appeal needs to be admitted on aforesaid question of law regarding tenancy rights.

5. I have perused the record of second appeal as well as the pleadings. The appellants have pleaded that they are in possession being tenants of the suit land. Perusal of the written statement do not show that any specific case was made out by the appellants with respect to any protected tenancy creating any right in favour of the appellants in view of the provisions of the Tenancy Act. Both the Courts have in fact specifically dealt with the case of the appellants claiming to be in possession as tenants. The bar of jurisdiction of the Civil Court under section 99 of the Tenancy Act is with respect to any issue that has to be decided and settled under the provisions of the Tenancy Act by the Competent Authority under the Tenancy Act. Until and unless the specific plea is raised by the appellants with respect to the specific right under the Tenancy Act to be dealt with settled, and decided under any of the provisions of the Tenancy

Act, the bar under section 99 will not apply only on a plain averment that the appellants have tenancy rights in respect of the suit land. In the decision of this Court relied upon by the appellants, a specific case was made out with respect to the protected tenancy and hence, in the said case, in view of the specific plea raised by the petitioners therein, specifically asserting the source of possession as protected tenants, this Court held that the issue was required to be referred to the tenancy court. In the present case, there is no such specific pleading of the appellants that their source of possession of the suit land is on the basis of the protected tenancy. Nothing was argued as to what exact rights are being claimed by the appellants under the provisions of the Tenancy Act, that are specifically required to be dealt with by the Tenancy Court. Thus, there is no merit in the submission of learned counsel for the appellants that the trial Court was required to refer the issue to the Tenancy Court.

6. The learned advocate for the appellants submitted that before the first appellate court, the appellants have filed an application for producing additional evidence by making a separate

application, however, the same was not considered by the first appellate court. He further submitted that the said application was rejected by the first appellate court. However, rejection was challenged in this Court by way of filing Writ Petition. He further submitted that though the notice was issued in the said Writ Petition, the same was not finally decided and in view of the disposal of Regular Civil Appeal No. 47 of 2009 in the District Court, Writ Petition was rendered infructuous. He further submitted that issue is required to be considered on the point that the appellants ought to have been given an opportunity to produce on record the additional documents to prove the tenancy rights of the appellants. I do not find that same can be a ground to admit the second appeal as there is no specific pleading of the appellants with respect of any source of possession on the ground of protected tenancy in respect of the suit land. Hence, for want of supporting pleading, the appellants are not entitled to lead any additional evidence.

7. Both the Courts have examined the documents on record with respect to the title of the plaintiffs and decreed the suit declaring the respondents as owners and restraining the appellants from

obstructing the possession of the respondents over the suit property. There is no illegality or perversity in the findings recorded by both the Courts.

8. For the reasons stated above, I do not find that any substantial question of law arises in the second appeal. Hence the second appeal is dismissed. There will be no order as to costs.

[GAURI GODSE]
JUDGE