

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 404 OF 2022

Amrutrao Ambadas Bhadarge and others ... Appellants
Versus
The State of Maharashtra and others ... Respondents

...
Mr. Kuldeep Patil h/f Mr. S. S. Choudhari – Advocate for Appellants
Mr. S. K. Chavan – Advocate for respondent no. 3-E
....

CORAM : GAURI GODSE, J.
DATE : 31st JANUARY, 2023

PER COURT :

1. This appeal is filed by the original defendant nos. 3 to 7 for challenging the judgment and decree dated 25th March, 2022 passed by the learned Extra Joint District Judge, Parbhani in Regular Civil Appeal No. 29 of 2018. The said appeal was preferred by the heirs and legal representatives of original plaintiff (respondent nos. 3-A to 3-F4) for challenging the judgment and decree dated 17th February, 2018 passed in Regular Civil Suit No.163 of 2013 by the learned Civil Judge, Senior Division, Gangakhed.
2. The deceased respondent no. 3 (“plaintiff”) had filed a suit for declaration that he is owner of the land to the extent of 8 acres

and 32 gunthas of Survey No. 62 (Old Gut No. 90) situated at village Kinhola, Taluka Pathri, District – Parbhani (“suit land”). The plaintiff also prayed for a decree of injunction restraining the appellants and respondent no. 7 (“defendant nos. 3 to 7”) from interfering with the peaceful possession of the plaintiff over the suit land. It is the case of the plaintiff that during the pendency of the suit, the plaintiff was dispossessed. Hence, by way of amendment, the prayer clause was added for recovery of possession.

3. It is the case of the plaintiff that he being an ex-serviceman, he was allotted the suit land by order dated 06th April, 1973, under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (“the Ceiling Act”). The plaintiff contended that the surplus land under the Ceiling Act was allotted to him on the ground of rehabilitation of the ex-servicemen. It is the case of the plaintiff that defendant nos. 3 to 7 were obstructing his possession and, therefore, initially the suit was filed for declaration as well as injunction and since the plaintiff was dispossessed at the hands of defendant nos.3 to 7, the suit was amended with a prayer for possession. The defendant nos. 3 to 7 had filed counter claim for injunction for

protecting their possession over the suit land. The plaintiff had filed written statement and denied the counter claim of the defendant nos. 3 to 7.

4. Initially the suit was dismissed by the trial court, however, the first appellate court has decreed the suit by holding that the plaintiff is owner of the suit land on the basis of a valid allotment of the suit land in favour of the plaintiff by order dated 06th April, 1973. The first appellate court has examined all the documents which were produced on record with respect to the allotment order, as well as handing over of possession pursuant to the allotment order to the plaintiff. The oral evidence was also led in support of the documents of allotment order and handing over of possession in favour of the plaintiff.
5. The defendant nos. 3 to 7 had objected to the suit on the ground that the plaintiff had refused to accept the possession pursuant to the allotment order in his favour and, thereafter, the suit land was allotted to the defendant no. 3 and thus the defendant no. 3 claimed to be in possession on the ground that the suit land was allotted to him.
6. The learned trial judge had dismissed the suit of the plaintiff and the counter claim of the defendant nos. 3 to 7 was allowed and

there was a decree of injunction passed against the plaintiff. The first appellate court dealt with the claim of the plaintiff as well as defendant nos. 3 to 7 with respect to the allotment order of the suit land. After examining the documents as well as the oral evidence, the first appellate court has recorded a specific finding that, defendant nos. 3 to 7 failed to prove that there was a valid allotment order in favour of defendant no. 3 as claimed by them. The first appellate court has recorded a specific finding in paragraph no. 101 of its judgment, thereby holding that the documents that were produced by defendant nos. 3 to 7 with respect to their case of allotment of the suit land in favour of defendant no. 3 do not indicate as to on what basis and by which order there was an allotment of the suit land in favour of defendant no. 3.

7. Thus, the first appellate court disbelieved the case of allotment in favour of defendant no. 3. The first appellate court has after examining the evidence on record also recorded a positive finding that there was absolutely no case made out by defendant nos. 3 to 7 with respect to the plaintiff not accepting and/or refusing to accept the possession of the suit land as per the allotment order in favour of the plaintiff. The first appellate

court has also recorded a finding that defendant no. 3 has not produced any document regarding any valid allotment of the suit land as is required under the provisions of the Ceiling Act.

8. By taking into consideration the evidence on record, the first appellate court has accepted that there was a valid allotment order in favour of the plaintiff and he was put in possession of the suit land pursuant to the order of allotment. Hence, has passed a decree for declaration and possession in favour of the plaintiff.
9. The learned counsel appearing for the appellants/defendant nos. 3 to 7 submitted that in view of Section 41 read with Section 40 of the Ceiling Act, civil court had no jurisdiction to entertain and try the suit of the plaintiff for the purpose of declaration of ownership and injunction as well as recovery of possession. The learned counsel for the appellants further submitted that there was a valid allotment of the suit land in favour of defendant no. 3, as the plaintiff had refused to accept the possession as per the allotment in his favour, hence, thereafter the suit land was allotted to defendant no. 3. Hence, he submitted that, in case of dispute with respect to the actual allotment of the land and/or the allotment orders which were passed under the Ceiling Act,

the civil court could not have passed a declaration with respect to the allotment in favour of the plaintiff, as the same can be decided only by the concerned authority as per the provisions of section 27 of the Ceiling Act. Thus, he submitted that there is a question of law involved in the second appeal and hence second appeal requires consideration.

10. The learned counsel appearing for respondent nos. 3-A to 3-F4/plaintiff supported the decree passed by the first appellate court. He submitted that the allotment order in favour of the plaintiff is never challenged. He further submitted that it is not even the case of the defendants that the allotment in favour of the plaintiff was anytime cancelled. He further submitted that the first appellate court being the last fact finding court, has on appreciation of evidence recorded that the plaintiff was in possession of the suit land pursuant to the allotment order in his favour. He also submitted that there was no issue with respect to the validity of the allotment order in favour of plaintiff and the suit was for declaration and possession, based on title of the plaintiff pursuant to the allotment order under the Ceiling Act. Hence, the suit was maintainable in the civil court. He thus, submitted that there was no merit in the arguments made on

behalf of the appellants and the second appeal be dismissed.

11. I have considered the submissions made by both the parties. Section 41 of the Ceiling Act provides for a bar of jurisdiction of the civil court for the purpose of settling, deciding or dealing with any question which is by or under the Act required to be settled, decided or dealt with by the Commissioner, Collector, Tribunal or the officer authorized under Section 27, the Maharashtra Revenue Tribunal or the State Government.
12. The suit is filed by the plaintiff initially for declaration of ownership on the basis of the allotment order passed in favour of the plaintiff. Subsequently, in view of the dispossession, he prayed for possession of the suit land. Thus, the suit filed by the plaintiff is not for deciding any issue with respect to the actual allotment of the suit land to the plaintiff, however, the suit was filed for a declaration of ownership on the basis of the allotment order. The source of title as well as possession of the plaintiff over the suit land is the order of allotment under the Ceiling Act. It is not in dispute that there was an allotment order in favour of the plaintiff. It is also not in dispute that the allotment order in favour of the plaintiff was never challenged by invoking any of the provisions of the Ceiling Act. Therefore, the first appellate

court while deciding the issue with respect to the ownership of the plaintiff, has examined the allotment order and on the basis of the documents of allotment as well as handing over of possession, has granted a declaration that the plaintiff is owner of the suit land and was put in possession of the same. Thus, the first appellate court has rightly passed a decree for possession in favour of the plaintiff. The defendant nos. 3 to 7 failed to prove any valid right, title or interest to retain possession of the suit land. The first appellate court has not examined any issue with respect to the entitlement of any party for the allotment of land under the Ceiling Act, which is required to be examined and decided under the provisions of the Ceiling Act. There is also a finding recorded by the first appellate court that defendant no. 3 failed to prove any valid allotment order in his favour.

13. The suit filed by the plaintiff was for declaration and possession on the basis of the allotment order. There is a finding of fact recorded by first appellate court, based on appreciation of evidence. Once it is not in dispute that the allotment order in favour of the plaintiff was never challenged, there cannot be any fault found with the reasoning given by the first appellate court. Action under section 40 of the Ceiling Act can be initiated at the

instance of the State Government in whom the land has vested under the Ceiling Act or even suo motu by the Collector, for summary eviction of a person who is in unauthorized occupation or wrongful possession of a land vested in the State Government under the Ceiling Act. Section 41 of the Ceiling Act, bars the jurisdiction of a civil court with respect to any matter which is to be settled, decided or dealt with by the authorities under the Ceiling Act including the Collector and the Tribunal. In this view, the bar under section 41 of the Ceiling Act, would be insufficient to deprive the Civil Court from entertaining the suit filed by the plaintiff on the basis of an undisputed valid allotment order made under the Ceiling Act. Thus, the objection raised by the appellants with respect to the jurisdiction of the civil court has no merit. I do not find that the second appeal involves any substantial question of law. Hence the second appeal is dismissed.

14. In view of dismissal of the second appeal, civil application is disposed off as infructuous.
15. At this stage, the learned counsel for the appellant seeks stay to the execution and implementation of this order. The allotment of the suit land in favour of the plaintiff is of the year 1973, on

the ground that he is an ex-serviceman. The suit was filed in the year 2013. In view of these facts of the case, the request made for stay is rejected.

[GAURI GODSE]
JUDGE