

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

SECOND APPEAL NO. 259 OF 2021

**ANIL NIVRUTTI RAJWAL AND OTHERS
VERSUS
BAJABA BHAWANI KANDALKAR AND OTHERS**

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Advocate for Appellants : Mr. Ubale Mahesh B. And L.K. Pradhan
Advocate for Respondent Nos. 1 & 2 : Mr. R.A. Tambe

**CORAM : R.M. JOSHI, J.
DATE : 21st March, 2023**

PER COURT :

1. Heard.
2. This appeal is preferred by the original plaintiffs being aggrieved by the judgment and decree passed by District Judge- 1, Shrirampur, District Ahmednagar, in Regular Civil Appeal No. 65 of 2013, confirming the judgment and decree dated 23rd September, 2013, passed by the Civil Judge Senior Division, Shrirampur, in Regular Civil Suit No. 32 of 2007, dismissing the suit for declaration and possession.
3. It is the case of the plaintiff that his father Nivrutti was the tenant in respect of Gat No. 134 which was admittedly owned by the

predecessors of the defendant. The suit is filed for the declaration stating that the plaintiffs are owners of the suit property more particularly described in plaint in paragraph no. 1 B. Consequential relief of possession thereof was also sought. It is the case of the plaintiff that his father was declared as protected tenant in respect of entire in Gat No. 134. However, by mistake the certificate under Section 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short “Act”), came to be issued only in respect of portion of Gat No. 134, as described in para no. 1 A of the plaint. He, therefore, claims his ownership in respect of property 1 B and seeks possession thereof.

4. Learned counsel for the appellant submits that the defendants have wrongly come into the possession of the suit property 1 B on the basis of agreement. He further submits that in view of Section 15 (2) of the Act, there is non compliance of requisite procedure laid down therein and, therefore, on the basis of such agreement the possession could not have been taken over by the defendants. He further submitted that defendants in his cross-examination has admitted that the father of the plaintiff was the tenant in respect of entire Gat No. 134 and, therefore, irrespective of the fact that the certificate issued by the competent authority declaring

plaintiffs father to be deemed purchaser only extent to respect of property of 1 A, the plaintiffs are entitled to get declaration as owners in respect of the entire Gat No. 134 and possession thereof.

5. Learned counsel for the contesting respondent no. 2/ Caveator opposed the said contentions. He submits that the plaintiffs have never challenged the agreement between Nivrutti and defendant in respect of handing over the possession of the property 1 B. He further states that question of compliance of under Section 15 (2) as claimed by the plaintiffs in respect of the said agreement does not arise for the reason that the plaintiff or his predecessor were never declared being deemed purchaser of the said part of the Gat No. 134.

6. This is an appeal under Section 100 of the Code of Civil Procedure, which is maintainable only where there is a substantial question of law involved therein. No doubt, it is also open for the appellant to show that the Courts below have committed serious error of non consideration or wrong consideration of evidence on record for exercise powers under Section 100 of the Code of Civil Procedure, by this Court.

7. Perusal of the pleadings and evidence on record indicates

that the case of the plaintiffs is solely rest upon the claim with the entire Gat No. 134 was held by Nivrutti as tenant and, therefore, he has become owner of the said entire Gat. As against this, there is documentary evidence on record in the form of certificate issued by competent authority, whereby, Nivrutti was declared deemed purchaser in respect of the property 1 A out of Gat No. 134. The mutation entries are also taken in the Revenue record in respect of the said land on the basis of the said certificate. Pertinently, Nivrutti in his Will also does not make reference to the property 1 B being owned by him. All these facts indicate that Nivrutti was deemed tenant and became owner of property '1 A' on the basis of certificate issued by the competent authority under Section 32 M of the Act and not property '1 B' described in plaint.

8. At this stage, it would be relevant to take into consideration provision of Section 32 M of the Act, which reads thus :

“Section 32 M – Purchase to be ineffective on tenant purchaser's failure to pay purchase price :

(1) On the deposit of the price in lump sum or of the last instalment of such price the Tribunal shall issue a certificate of purchase in the prescribed form, to the tenant-purchaser in respect of the land. Such

certificate shall be conclusive evidence of purchase, In the event of failure of recovery of purchase price as arrears of land revenue under sub-section (3) of section 32 K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal under section 32 P and any amount deposited by such tenant-purchaser towards the price of the land shall be refunded to him.

(2) xxxxxxxx.”

It is apparent from the aforesaid provision that the certificate issued under this Section is conclusive proof of purchase. The said certificate is not challenged in appeal nor any steps are taken in respect of correction of description of the property by Nivrutti or plaintiffs. The certificate not only establishes that Nivrutti was purchaser of the land but he was in possession thereof on 1st April, 1957 (tillers day). For want of challenge certificate issued under Section 32 M has attained finality.

9. Once the certificate issued under Section 32 M of the Act, in favour of Nivrutti has attained finality, there is no propriety for Civil Court to consider any objection with regard to the same including that by mistake said certificate does not include property ‘1 B’. Section 85 of the Act creates bar to the jurisdiction of the Civil Court to settle,

decide or deal with any question, including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him. The Courts below therefore had no jurisdiction to go in to the issue sought to be raised by plaintiffs on subject of correction of certificate under Section 32 M.

10. As far as arguments of learned counsel about non compliance of Section 15 (2) of Act, there is no challenge to the agreement between defendants and Nivrutti. Similarly, for want of issuance of certificate under Section 32 M in respect of suit property 1 B in favour of Nivrutti, otherwise also question of compliance of Section 15 (2) of Act, does not arise. The said submission deserves no consideration since without merit.

11. Both Courts below have taken into consideration the relevant material evidence on record more particularly certificate under Section 32 M of Act, and recorded the findings against plaintiff. This Court finds no error of law or facts being committed by the Courts below in arriving at the findings as recorded in the impugned judgments. As such there is no reason or justification to disturb concurrent findings recorded by both Courts.

12. Since no substantial question of law has been made out by the appellant, appeal must fail. Hence, Second Appeal stands dismissed with cost.

[R.M. JOSHI, J.]

SPChauhan