

Sonali

SONALI
MILIND
PATIL
Digitally
signed by
SONALI
MILIND
PATIL
Date:
2023.06.15
17:21:08
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 71 OF 2019
WITH
CIVIL APPLICATION NO. 117 OF 2019**

Smt. Laxmibai w/o. Pandurang Shenavi & Ors. ...Appellants
Versus
Smt. Sujata Subhash Vader & Ors. ...Respondents

Mr. Rohit Joshi a/w. Mr. Sandeep Mahadik, for the Appellants.

Mr. S. M. Kamble, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATED : 7th JUNE 2023

P.C. :

1. Heard Mr. Joshi, learned counsel appearing for the Appellants and Mr. S. M. Kamble, learned counsel appearing for the Respondent No.1.
2. The Appellants i.e. original Defendants by the present Second Appeal are challenging the legality and validity of the Judgment and Decree dated 13th January 2009 passed by the learned Civil Judge, Junior Division, Gargoti, District Kolhapur in Regular Civil Suit No.42 of 2004 as well as the Judgment and Decree dated 14th December 2017 passed by the learned District Judge No.6, Kolhapur in Regular Civil

Sonali

Appeal No.42 of 2009.

3. The said Regular Civil Suit No.42 of 2004 was filed by the Plaintiffs by contending that they are the owners of the suit property and the Defendants are the trespassers. The learned Trial Court decreed the suit by granting declaration that the Plaintiffs are the owners of the suit property and further granted decree of the possession by holding that the Defendants have encroached upon the suit property. Present Appellants i.e. the Defendants challenged the said Judgment and Decree of the learned Trial Court by filing Regular Civil Appeal No.42 of 2009. The said Regular Civil Appeal was dismissed by Judgment and Decree dated 14th December 2017. Hence the present Second Appeal.

4. Mr. Joshi, learned counsel appearing for the Appellants has raised the following substantial questions of law:-

- i. Whether the learned Trial Court as well as the learned Lower Appellate Court has jurisdiction to adjudicate the question of the validity of the orders passed under Sections 32G and 32P of the Maharashtra Tenancy and Agricultural Land Act, 1948 in contravention of Section 85 of the said Act?
- ii. Whether the Civil Court has jurisdiction to decide

the legality and validity of the order passed by the Revenue Authority in Revenue and/or Tenancy matters exercising powers under the provisions of the Maharashtra Tenancy and Agricultural Land Act, 1948?

iii. Both the Courts erred in not framing the issue as per the provision of Order 14 Rule 2 of the CPC as in the written statement, the Defendants specifically pleaded in respect of matter pending before Revenue Court and as such required to be referred to the Tenancy Court?

iv. Both the Courts without having jurisdiction and without referring the matter to the Tenancy Court erred in relying on Mutation Entry No.1554?

v. Both the Courts below ought to have considered the fact that admittedly Defendants have constructed house in the year 1968 and till filing of the suit i.e. 2004, Plaintiffs have not raised any objection and as such whether the suit filed by the Plaintiffs is barred by law of limitation?

5. Mr. Joshi pointed out certain documents and submitted that the Appellants are in possession of the suit property and as the Appellants have constructed the house in the year 1968, the suit filed in the year 2004 is barred by limitation. He also submitted that as the issue of the

Sonali

tenancy is specifically raised in the written statement, the learned Trial Court should have framed the said issue and the same should have been referred to the Competent Authority under the provision of the Tenancy Act.

6. On the other hand, Mr. Kamble, learned counsel appearing for the Respondents pointed out various orders of the Revenue Authorities and submitted that the Respondents are not the tenants. He pointed out the concurrent findings recorded by both the Courts and therefore, submitted that the Second Appeal be dismissed.

7. Before considering the rival contentions, it is necessary to set out certain factual position.

A) It is admitted position that the Appellants/their ancestors were the tenants of the suit property and the Respondents/their ancestors were the landlords.

B) It is also admitted position that somewhere in 1959-1960, half portion of the suit property was handed over to the owners by the tenants.

C) As far as balance half portion of the land in question, the tenants filed 32G proceedings. However, in

Sonali

the said 32G proceedings, learned Additional Tahsildar & A.L.T., Bhudargad by order dated 3rd February 1969 held that the landlord requires the land for bonafide personal cultivation. With this finding, learned Additional Tahsildar & A. L. T., Bhudargad directed that balance half portion of the land be restored to the landlord for personal cultivation. Mr. Joshi, learned counsel appearing for the Appellants fairly admitted that the said order has not been challenged and the said order has attained finality. It is the contention of the Respondents that since then the Respondents are in the possession of the entire property.

D) The present Respondents i.e. the original Plaintiffs filed Regular Civil Suit No.42 of 2004 seeking possession by taking contention that the Defendants have encroached the suit property in November-2001 and constructed the house.

E) It appears that after the said encroachment in 2001, the Defendants i.e. present Appellants filed fresh R.T.S. proceedings under Section 32G of the Maharashtra

Sonali

Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the **“Tenancy Act”**) bearing Tenancy Case No.25 of 2003. The said Tenancy Case was rejected. Against the said decision, the Appellants moved an appeal before the Sub-Divisional Officer, Radhanagari being Tenancy Appeal No.11 of 2006, which was dismissed on 10th September 2009. The said decision was challenged before the Maharashtra Revenue Tribunal, Pune and the same was dismissed on 10th April 2017. Mr. Joshi, learned counsel appearing for the Appellants fairly admitted that no further proceedings have been filed and the said orders in fresh 32G proceedings have attained finality.

F) Thus, as per the admitted position, in or about 1959-1960, half of the land was handed over to the landlord. In the first round of 32G proceedings, finding is recorded that landlord requires the suit land for bonafide personal cultivation and therefore, directed restoration of half of the land for personal cultivation to the landlord by order dated 3rd February 1969 and the said order was

accepted by the tenant.

8. Thus, if on the basis of above factual position, the substantial questions of law raised by Mr. Joshi are considered, then it is clear that there is no substance in any of the substantial questions of law raised by Mr. Joshi. The substantial questions of law bearing Nos. (i) to (iv) raised by Mr. Joshi are concerning jurisdiction of the Civil Court to adjudicate the question of validity of the orders passed by the Tenancy Authorities or referring the issue to the Tenancy Court and till that time, staying the said proceedings in view of the provisions of Section 85 of the Tenancy Act. The factual position narrated hereinabove clearly show that in the year 1959-1960, Defendants have already handed over half portion of the suit property under 32G proceedings filed by the Defendants. With respect to balance half portion of the suit property, finding is recorded by order dated 3rd February 1969 that the said land is required for bonafide personal cultivation by the landlord and therefore, order was passed directing handing over of the possession to the landlord. It has also come on record that in the year 2003, fresh Tenancy Case No.25 of 2003 was filed by the Defendants under Section 32G of the said Act and the said proceedings also came

Sonali

to an end by which claim of the Defendants raised under Section 32G has been rejected. It is also admitted position that the said orders have attained finality.

9. The contention of Mr. Joshi, learned counsel appearing for the Appellants that the suit should have been stayed and the issue of tenancy should have been referred to the Tenancy Authorities is required to be rejected for more than one reason. As already held hereinabove, the claim of tenancy of the Appellants has been finally rejected by order dated 3rd February 1969 of the Additional Tahsildar & A.L.T., Bhudargad. Thus, it is clear that since 3rd February 1969, Defendants have no right, title and interest with respect to any portion of the suit property. Apart from that, the proceedings on the basis of which, Mr. Joshi has raised the above substantial questions of law (i) to (iv), are second round of proceedings filed under Section 32G of the Tenancy Act bearing Tenancy Case No.25 of 2003. It is admitted position that said Tenancy Case was dismissed. The appeal filed in the year 2006 against the said judgment is also dismissed and proceedings filed in the year 2017 before the Maharashtra Revenue Tribunal also came to be dismissed. Therefore, the Tenancy Authorities have

Sonali

concluded that the Defendants are not the tenants. The Civil Court has relied on those findings. Both the Courts have concurrently held that they cannot go into the aspect whether Tenancy Authorities have rightly concluded the issue. Section 85 of the Tenancy Act provides that no Civil Court shall have jurisdiction 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 which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the Government in exercise of their powers of control. As set out hereinabove, Mr. Joshi, learned counsel appearing for the Appellants fairly admits that the issue of tenancy is finally concluded. Therefore, the Civil Court cannot go into that aspect. Thus, there is no substance in the contention of Mr. Joshi that the learned Trial Court should have framed tenancy issue and should have referred the same to the Tenancy Authorities as required under Section 85 r/w. Section 85-A of the Tenancy Act.

Sonali

10. A learned Single Judge of this Court in **Nausabai Balu Patil vs. Kamal Chaugunda Patil & Ors.**¹ and a Division Bench of this Court in **Pulmati Shyamlal Mishra & Anr. vs. Ramkrishna Gangaprasad Bajpai & Ors.**² has held that it is only a bonafide and legally sustainable claim of tenancy that can be referred to the Competent Authority in exercise of the provisions of Section 85-A of the Tenancy Act. In this particular case, tenancy claim of the Appellant has been conclusively rejected by two separate sets of proceedings once in 1969 and thereafter in 2003. Therefore, it cannot be said that said issue is legally sustainable requiring framing of issue and reference of the same to the Tenancy Authorities.

11. It is further contention of Mr. Joshi that the Appellants are in possession of the suit property and there is material on record to show that houses are constructed by the Appellants in the year 1969 and therefore, suit filed in the year 2004 for eviction is not maintainable and in any case, is not within limitation. Both the Courts have concurrently held that the Defendants were not in possession of the

¹ 2002(5) Bom. C.R. 768

² (1981) Mh. L.J. 321

Sonali

suit property and they trespassed the suit property in 2001. However, even if, the contentions of the Appellants are accepted, then also it is clear that the applicable Article of the Limitation Act is Article 65. As far as the said Article is concerned, suit filed for possession of immovable property or any interest therein based on title, the period of limitation provided is 12 years and the said period begins to run when the possession of the Defendant becomes adverse to the Plaintiff. The factual position on record clearly show that the claim of the Defendants as made under Section 32G of the Tenancy Act has been negated. Therefore, it is clear that there is no substance in the 5th substantial question of law raised by Mr. Joshi. The Appellants have not raised plea of adverse possession and in any case, there is no evidence with respect to the said contention. Therefore, there is no substance in said substantial question of law.

12. Accordingly, the Second Appeal is dismissed, however, with no order as to costs. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the same is also dismissed.

13. At this stage, Mr. Joshi, learned counsel appearing for the Appellants states that the decree of the Trial Court dated 13th January

Sonali

2009 as confirmed by the learned First Appellate Court by order dated 14th December 2017 is not yet executed and this Court has protected the Appellants. Therefore, the Appellants' possession be protected for reasonable period. Mr. Kamble, learned counsel appearing for Respondent No.1 strongly opposes the said request. However, in the interest of justice, the eviction decree shall not be executed till 30th September 2023.

[MADHAV J. JAMDAR, J.]